

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 **BEESON, TAYER & BODINE, APC**
4 483 Ninth Street, 2nd Floor
5 Oakland, CA 94607
6 Telephone: (510) 625-9700
7 Facsimile: (510) 625-8275
8 Email: tpaterson@beesontayer.com
9 vsoroushian@beesontayer.com

10 Attorneys for Plaintiff
11 **AFSCME LOCAL 101**

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**
15 **AT SAN JOSÉ**

16 **SAN JOSE POLICE OFFICERS'**
17 **ASSOCIATION,**

18 Plaintiff,

19 v.

20 **CITY OF SAN JOSÉ, BOARD OF**
21 **ADMINISTRATION FOR POLICE AND FIRE**
22 **DEPARTMENT RETIREMENT PLAN OF**
23 **CITY OF SAN JOSE, and DOES 1-10,**
24 inclusive,

25 Defendants.

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]

26 **DECLARATION OF CHARLES ALLEN IN**
27 **SUPPORT OF AFSCME LOCAL 101'S**
28 **OPPOSITION TO DEFENDANT'S**
MOTION FOR SUMMARY
ADJUDICATION

Hearing Date: June 7, 2013
Hearing Time: 9:00 a.m.
Courtroom: 2
Judge: Hon. Patricia Lucas
Complaint Filed: July 5, 2012
Trial Date: June 17, 2013

29 **AND RELATED CROSS-COMPLAINT AND**
30 **CONSOLIDATED ACTIONS**

31 I, CHARLES ALLEN, declare:

32 1. I am a Business Agent for Local 101 of the American Federation of State, County and
33 Municipal Employees ("AFSCME" or "Union"). I have served in that capacity since December 14,
34

1 2010. I have personal knowledge of the facts set forth below and if called as a witness I could and
2 would testify competently thereto.

3 2. AFSCME consists of two bargaining units: the Municipal Employees' Federation ("MEF")
4 and Confidential Employees' Organization ("CEO"). MEF has been without a negotiated contract
5 with the City of San José ("City") since the previous one expired on June 30, 2011, and CEO has
6 been without one since theirs expired on September 17, 2011. I was and am personally involved in
7 the efforts to bargain new contracts with the City for MEF and CEO and with the negotiations related
8 to retirement and Measure B. I reviewed the offers and side-letters.

9 3. On May 12, 2011, the City presented AFSCME (both MEF and CEO) with a last, best and
10 final offer for a new contract. Within the offer were two side-letters: one was with respect to the
11 Supplemental Retiree Benefit Reserve ("SRBR") and the other concerned pension reform.

12 4. The City never made a proposal concerning pension benefits during the 2011 contract
13 negotiations, despite its professed desire to initiate pension reform. Its bargaining agents averred that
14 the issue was too complicated at the time and, instead, preferred addressing the issue through a side-
15 letter. In fact, AFSCME asked the City if it had any pension proposals in Spring 2011, and the City
16 denied having any.

17 5. On May 13, 2011, Mayor Reed and the City Council issued a memorandum stating that they
18 would be amending the City's Charter to limit retirement benefits. I reviewed the memo.

19 6. On May 17, 2011, the City Council voted to impose terms and conditions with respect to the
20 contracts on AFSCME. This included imposing wage reductions of over ten percent and an
21 additional "give-back" in which it rescinded a previously-granted two percent salary increase on
22 members of CEO and MEF. The result was a wage reduction of over twelve percent for AFSCME
23 members. However, it did not impose the aforementioned side-letters concerning the SRBR or
24 retirement reform. Since these imposed wage reductions, the City's payroll decreased by over 2,000
25 workers. This is a fact that the City recognized during negotiation sessions at which I was present.

26 7. On May 24, 2011, the City Council approved the aforementioned memo from May 13 and
27 directed staff to create a ballot measure. On June 3, 2011, AFSCME received a letter from Gina
28 Donnelly, former Deputy Director of Employee Relations for the City, stating that the staff would be

1 returning to the City Council on June 21 to present a proposed ballot measure. The City offered
2 AFSCME an opportunity to discuss the matter.

3 **Negotiating Measure B**

4 8. I was directly involved with and present at each negotiation session with the City of San José
5 ("City") related to pension reform and Measure B. I never saw Alex Gurza at any of the negotiation
6 sessions and do not remember him being involved in the negotiations. Gina Donnelly did most of the
7 negotiating for the City.

8 9. AFSCME negotiated with the City over Measure B as part of a Coalition of unions including
9 ABMEI, IBEW, and Local 3 of the Operating Engineers (collectively "Coalition").

10 10. On June 8, 2011, the City sent a letter to the Coalition unions informing them of the proposed
11 ballot measure.

12 11. The City did not spend over a year negotiating with AFSCME or the Coalition with respect to
13 Measure B. On June 13, 2011, the City held a meeting for about forty-five minutes with the
14 Coalition and Association of Legal Professionals in which it distributed a handout regarding its
15 timeline and process for putting Measure B before the electorate. Coalition negotiations over
16 Measure B commenced on July 6, 2011, and ended with the City declaring impasse on November 17,
17 2011. The parties then participated in about four to six mediation sessions that ended around
18 February 13, 2012.

19 12. Furthermore, at a retirement negotiations session on November 15, 2011, the Coalition
20 presented the City with its "Grand Bargain," a complex, yet comprehensive retirement proposal
21 designed to save the City millions of dollars. The City left the room to consider the Grand Bargain
22 for fifteen minutes. It came back with a couple of minor questions; it then adjourned the meeting.
23 Two days later, on November 17, 2011, the City rejected the Coalition's Grand Bargain,
24 communicated its unwillingness to engage in further substantive bargaining sessions, and declared
25 impasse.

26 **Measure B and Pensions**

27 13. Measure B requires employees to either make additional pension contributions (Section 1506-
28 A) or to enroll in an alternate plan affording them with substantially lower benefits (Section 1507-A).

1 While Measure B negatively affects employees' incomes or pension benefits, it does not provide them
2 with any benefit in exchange for the detriment.

3 14. AFSCME has never agreed with the City that employee pension contribution rates are
4 interchangeable with wage decreases.

5 15. Neither AFSCME nor its members have offered or agreed for its members to make additional
6 contributions towards the City's unfunded pension liabilities. Prior to Measure B, the City never
7 required that AFSCME members contribute towards the cost of the City's unfunded liabilities and
8 only improved member benefits.

9 **Retiree Health**

10 16. In 2009, MEF and CEO of AFSCME Local 101—along with other City unions—agreed with
11 the City that its members would make Annual Required Contributions ("ARC") towards retiree
12 health benefits, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of
13 retiree healthcare costs.

14 17. When MEF and CEO reached the agreement described in the aforementioned paragraph with
15 respect to funding of the ARC, it did so in part because of the following attendant circumstances: a
16 guaranteed salary increase for the remaining year of the contract, a healthy economy, and the healthy
17 financial situation of the City. At the time, AFSCME was unaware of the approximately 20%
18 reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit
19 cost, etc.) that the City would affect in the future. The effect of these changes made a material impact
20 on the significance of the 2009 agreement and resulted in significantly greater costs to active
21 employees under the 2009 agreement. Further, the Union was unaware of the City's future plans to
22 design Measure B and put it to the voters. As a result of these intervening events, the 2009
23 agreement was never fully implemented by the City and, indeed, key provisions have been
24 abandoned by the parties. It is AFSCME's position that the parties are no longer operating under the
25 agreement, if they ever were.

26 **Other**

27 18. The current mean gross salary of a full-time, benefited AFSCME member is \$66,559.50. The
28 City employs more members of the MEF bargaining unit, and they receive lower salaries than

1 employees within the CEO bargaining unit do. I arrived at the aforementioned mean salary based
2 upon the figures contained within the City's response to a Public Records Request submitted by the
3 Union. A true and correct copy of the City's response dated February 14, 2013, which the Union
4 maintains in its files and on MEF's website during the regular course of business, is attached as
5 **Exhibit 1.**

6 19. An actuarial valuation showed that, as on June 30, 2012, Tier 1 AFSCME members
7 contributed 5.97% of salary towards pension and could be forced to contribute 10.74% of salary
8 towards retiree healthcare if the Union is unable to reach agreement on retiree healthcare by June
9 2013. After factoring out such deductions based on the aforementioned 2012 figures, the mean net
10 salary of a full-time, benefited member is AFSCME member is approximately \$55,437.41. I arrived
11 at the aforementioned percentage figures based upon Exhibit 1, *supra*, and information within a
12 memorandum from Alex Gurza to the Mayor and City Council dated March 19, 2013. A true and
13 correct copy of the March 19th memorandum, which the Union maintains in its files during the
14 regular course of business, is attached as **Exhibit 2.**

15 20. Throughout contract and retirement negotiations, Mayor Reed represented that he wanted to
16 reduce employees' compensation. However, he also represented that he would seek revenues/raise
17 taxes. However, he never attempted to raise revenues.

18 21. To date, the City has adopted an ordinance implementing Section 1511-A regarding the
19 elimination of the Supplemental Retiree Benefit Reserve. It has not issued any further ordinances
20 affecting members of the Federated System under authority of Measure B.

21 22. AFSCME members have never been enrolled in the federal Social Security program. The
22 Federated City Employees' Retirement System is an alternative to Social Security.

23 **Documents**

24 23. In its ordinary course of business, AFSCME maintains in its files documents that were
25 produced and distributed by or for the City, its agents, and the Federated City Employees Retirement
26 System. Attached as **Exhibits 3 through 8** are true and correct copies of the following reports
27 originating from the aforementioned:
28

1 24. On page 2 of the following memorandum to all City employees and retirees which I have
2 reviewed, Debra Figone, the City Manager and a defendant in this case, stated that the “retiree
3 healthcare benefit can be considered ‘vested’ similar to the pension benefit itself. Based on this, we
4 will not be recommending changes to retiree healthcare benefits ... for current employees or retirees
5 at this time.” A true and correct copies of the memorandum, dated March 4, 2008, is attached as
6 **Exhibit 3.**

7 25. On page 17 of the following memorandum—which I have reviewed—from Kirstin D.
8 Poirier-Whitley of the law firm Jones Day¹ to the City of San José, the former avers: “It appears
9 that, depending upon the nature and terms of the ‘contract’ involved, retiree health benefits, like
10 pension benefits, may become ‘vested’ and constitutionally protected from impairment.” On page 20
11 of the same memorandum, Ms. Poirier-Whitley further avers: “I believe that it would be difficult to
12 argue that retiree health benefits are not elements of deferred compensation that, like pension
13 benefits, may vest upon acceptance of employment.” A true and correct copy of the memorandum,
14 dated February 7, 2008, along with a transmittal memorandum from the City Attorney to the former
15 Director of retirement services, dated March 7, 2008, is attached as **Exhibit 4.** The Union received a
16 copy of the memorandum from an agent of the City, and AFSCME maintains it in its files during the
17 regular course of business; it is available for public viewing on the MEF website. Furthermore, the
18 memorandum is available on the City’s own public website.

19 26. In the regular course of its business, the Union also maintains past and present retirement
20 handbooks for members of the Federated City Employees’ Retirement System (“handbooks”). Such
21 handbooks were distributed to AFSCME members, and I have reviewed the ones in our possession.
22 In discussing contribution rates owing from employees for unfunded liabilities, the handbooks refer
23 to Municipal Code Sect. 3.28.710, which states that employees are not responsible for paying
24 unfunded liabilities. True and correct copies of the relevant portions of the handbooks for Sept. 1990,
25 Fall 1995, Fall 1997, and year 2000 are attached, respectively, as **Exhibits 5, 6, 7, and 8.** The
26 aforementioned language can be found on pages 13, 9, 9, and 9 of the documents, respectively.

27
28

¹ Jones Day is counsel to a purported *amicus curiae* in this case.

1 27. Furthermore, the Sept. 1990 handbook, attached as Exhibit 5, contained a section entitled
2 "Vesting." (p. 19.) It stated: "To be 'vested' literally means to be entitled to a future benefit. You
3 become vested in the retirement system after five (5) years of membership."

4 28. Additionally, the retirement handbooks defined "prior service" as, "Your City service prior to
5 July 1, 1975, for which you are entitled to credit under this System. [SJM 3.28.030(T)]." They also
6 defined "current service" as, "Your City service since July 1, 1975. [SJM 3.28.030(H)]." (See, e.g.,
7 Exh. 8, pp. 73, 74.)

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct and that I executed this declaration on April 30, 2013, in San Jose, California.

10
11
12 By:


CHARLES ALLEN

EXHIBIT 1

February 14, 2013

Yolanda Cruz, President
Municipal Employees' Federation, AFSCME, Local 101
c/o Dr. MLK Jr. Library
150 E. San Fernando St.
San Jose, CA 95112

LaVerne Washington, President
Confidential Employees' Organization, AFSCME, Local 101
c/o City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

Charles Allen, Business Agent
AFSCME, Local 101
1900 Embarcadero #305
Oakland, CA 94606

Re: Information Request dated January 28, 2013

Dear Yolanda, LaVerne and Charles:

We are in receipt of your information request dated January 28, 2013. During the negotiation session on January 31, 2013, we jointly reviewed the information request and have noted the modified information that will be provided where appropriate.

- 1. A list and count of employees by department, worksite location, job title and benefit class (B, C, D) with number of hours worked in 2012.**

As discussed during our negotiation session on January 31, 2013, we are unable to provide worksite location; however, in some cases PeopleSoft does provide department division information and we have included that information where available. In addition, we have provided the number of hours worked in 2012 for part-time employees only, as discussed. Please note that, for both MEF and CEO, the data pulled from PeopleSoft did not produce any employees in the 25-29 hour benefit category, and that the data contained in the attachment is of actual positions per PeopleSoft.

Please see Attachment 1.

2. A list of current salary information for each incumbent to include date of hire, date appointed to current position, fund in which personnel costs are accounted, e.g. general fund.

As discussed during the negotiation session on January 31, 2013, we are providing a report that includes the employee's hourly rate, date of hire, and date appointed to current position. In addition, we are providing the vis-code that the employee is funded from. Vis-codes beginning with 001 are General Fund vis-codes. As discussed, if an employee is funded by multiple funding sources, they will appear on the report multiple times. Please note that, for both MEF and CEO, the data pulled from PeopleSoft did not produce any employees in the 25-29 hour benefit category, and that the data contained in the attachment is of actual positions per PeopleSoft.

For your reference, we have included the Summary of Fund Activity and the Fund Descriptions from the FY 2012-2013 Adopted Operating Budget, which may assist you in identifying the various vis-codes. Please note that, given the confidential nature of the information contained in this report, we will not be posting this attachment.

Please see Attachment 2.

3. Average salary and median salary for active employees subdivided into fulltime, part-time benefitted (Code B, C, D) and part-time un-benefitted.

Bargaining Unit	Average Hourly Rate 19 Hours or Less	Average Hourly Rate 20-24 Hours	Average Hourly Rate 25-29 Hours	Average Hourly Rate 30-34 Hours	Average Hourly Rate Full Time
MEF	\$15.97	\$25.49	N/A	\$20.30	\$29.99
CEO	\$35.14	\$31.08	N/A	\$27.79	\$34.01

Bargaining Unit	Median Hourly Rate 19 Hours or Less	Median Hourly Rate 20-24 Hours	Median Hourly Rate 25-29 Hours	Median Hourly Rate 30-34 Hours	Median Hourly Rate Full Time
MEF	\$15.98	\$22.01	N/A	\$19.30	\$29.51
CEO	\$35.50	\$28.11	N/A	\$29.50	\$36.39

Please note that the information provided in the table above is based on employees' current hourly rates per PeopleSoft.

4. A list by department, job title and last pay period worked for part-time employees by benefit class with zero hours.

As discussed during our negotiation session on January 31, 2013, we are providing the employee's department, classification, number of hours worked in calendar year 2012, and their benefit level. Information regarding an employee's last paycheck is not readily available, and as such, is not included in the attachment. Please note that the data contained in the attachment is of actual positions per PeopleSoft.

Please see Attachment 1.

5. A list by department, job title, worksite location and hours worked by seasonal employees in 2008, 2009, 2010, 2011 and 2012.

As discussed during our negotiation session on January 31, 2013, we will not be providing a separate response to this question. However, information that may be responsive to this request may be found in Attachment 1. Please note that the data contained in the attachment is of actual positions per PeopleSoft.

6. A list by department and job title of employees at top step and duration they have been at top step, i.e. since 2008, 2009, etc....

Please see Attachment 3. Please note that the data contained in the attachment is of actual positions per PeopleSoft.

7. A list by department, permanent job title, higher class position and worksite location of employees working in a higher classification. Include number of hours worked in higher class positions and duration of assignment, for 2008, 2009, 2010, 2011, and 2012. Also include if there have been any extensions for higher class pay beyond 6 months approved or not approved by the Union.

As discussed during our negotiation session on January 31, 2013, we are providing the department, classification, and the number of hours reported as higher class pay for 2008, 2009, 2010, 2011, and 2012. Information regarding the higher class position is not readily available, and as such, is not included in the attachment. Please note we are unable to determine via PeopleSoft if an employee worked multiple higher class assignments in a given year and the duration of each higher class assignment.

Please see Attachment 4.

8. A list of employees with their total sick leave hour accruals for 2009, 2010, 2011, 2012 and present.

As discussed during our negotiation session on January 31, 2013, we are providing the employee's department and number of accrued sick leave hours as of pay period 26 in the 2012 calendar year.

Please see Attachment 5.

9. Number of part-time benefitted and un-benefitted employees by benefit code (B, C, D) in the Federated retirement plan.

Bargaining Unit	19 Hours or less	20-24 Hours	25-29 Hours	30-34 Hours
MEF	20	17	N/A	8
CEO	4	1	N/A	2

Please note that the data contained in the table above is based on actual positions per PeopleSoft.

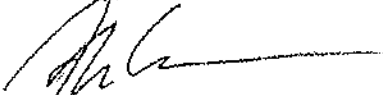
10. List of paid interns, contract employees by department, worksite location and classification and duration of appointment for 2008, 2009, 2010, 2011, 2012 and present.

As discussed during our negotiation session on January 31, 2013, we are providing a list of paid interns by department. Please note that the data contained in the attachment is of actual positions per PeopleSoft.

Please see Attachment 6.

Please let me know if you have any questions regarding the information provided.

Sincerely,



Alex Gurza
Deputy City Manager

EXHIBIT 2



Distributed on:

MAR 20 2013

City Manager's Office

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: Pension and Retiree Healthcare
Valuations Update

DATE: March 19, 2013

Approved

Date

3/20/13

INFORMATION

The Retirement Boards' actuary, Cheiron, has completed the valuations for Fiscal Year 2013-2014, using data as of June 30, 2012. The purpose of this memorandum is to provide the City Council with an update on these valuations. These latest actuarial valuations estimate an over **\$2.9 billion** total unfunded liability from the pension and retiree healthcare benefits programs in both the Federated City Employees' Retirement System and Police and Fire Department Retirement Plan.

The City has undertaken efforts to address the significant unfunded liabilities in both retirement plans. These latest valuations include the following significant changes:

- Implementation of Tier 2 in the Federated Retirement System
- Elimination of the Supplemental Retiree Benefit Reserve (SRBR)
- Healthcare plan design changes

The Federated City Employees' Retirement System and the Police and Fire Department Plan use Cheiron, Inc. to provide actuarial valuations of the respective retirement systems' pension and retiree healthcare programs. The information contained in this memorandum is based on Cheiron's valuations as of June 30, 2012. Please note that the Boards' actuary conducts valuations on an annual basis, as of June 30th of each year. The most recent completed actuarial valuations as of June 30, 2012, will serve as the basis for the contribution rates for Fiscal Year 2013-2014. This memorandum has been issued at this time due to the completion and the Boards' approval of all actuarial valuations by the Boards' actuary.

FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM

Federated Pension Actuarial Valuation

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014. This information can be found in the June 30, 2011, and June 30, 2012, pension actuarial valuations.

Federated Tier 1 and Tier 2 Pension ¹	Federated Tier 1 Valuation as of 06/30/11 ²	Federated Tier 1 Valuation as of 06/30/12 ³	Federated Tier 2 Valuation as of 6/30/12 ⁴
Employee Pension Contribution Rate	5.74%	5.97%	6.68%
City Pension Contribution Rate	44.45%	50.85%	6.68%
Total Pension Contribution Rate	50.19%	56.82%	13.36%
Net Change in Total Pension Contribution Rate	6.63%		N/A

As of September 30, 2012, any new hire or rehire into the Federated City Employees' Retirement System has been placed in Tier 2. As of February 13, 2013, there are 118 employees in Tier 2. Tier 2 significantly reduces the City's costs for retirement benefits. The Tier 2 contribution rates are shared 50/50 between employees and the City. The chart above also includes the Tier 2 contribution rates.

Cheiron's Federated pension actuarial valuation report, as of June 30, 2012, indicates that there is an unfunded liability of approximately \$1.08 billion. As part of the implementation of the retirement changes, the Supplemental Retiree Benefit Reserve (SRBR) was eliminated. Without elimination of the SRBR, the Federated pension unfunded liability would have been \$1.12 billion. However, even with the elimination of the SRBR, there was a 9.82% increase in the unfunded actuarial liability from the previous fiscal year.

The following chart for the Federated pension actuarial valuation describes the unfunded actuarial liability and funding ratios for the Plan as of June 30, 2011, and June 30, 2012.

Federated Tier 1 Pension ¹	Valuation as of 06/30/11 ²	Valuation as of 06/30/12 ³
Discount Rate (Earnings Assumption)	7.50%	7.50%
Unfunded Actuarial Liability (UAL)	\$981.568 Million	\$1.078 Billion
Net Change in UAL	\$96.432 Million 9.82%	
Funding Ratio – Actuarial Value of Assets	65.00%	62.00%
Funding Ratio – Market Value of Assets	64.00%	58.00%

¹ The Federated pension actuarial valuation numbers include the elimination of the SRBR as of June 30, 2012

² Cheiron's Federated pension actuarial valuation as of June 30, 2011 (Report dated November 2011)

³ Cheiron's Federated pension actuarial valuation as of June 30, 2012 (Report dated December 2012)

⁴ Cheiron's Federated pension actuarial valuation as of June 30, 2012 (Report dated December 2012)

Federated Retiree Healthcare Valuation

Cheiron also completed a valuation on the Federated Retirement System's retiree healthcare plan as of June 30, 2012. The retiree healthcare plan design changes that were implemented in the last few years had a significant impact on lowering the unfunded liability. In the Federated System alone, these plan design changes were the primary factor in an approximate \$200 million reduction in the Federated retiree healthcare unfunded liability.

In 2009, the City and most bargaining units began a five year phase-in to fully pre-fund the Annual Required Contribution (ARC) for retiree healthcare. The end of this five year phase-in is this year and the City and employees in the Federated retirement system will begin paying the full Annual Required Contribution. Even with the \$200 million decrease in the unfunded liability, this will result in a 3.48% increase for employees in retiree healthcare contribution alone and a 4.02% increase for the City.

The June 30, 2012, actuarial valuation takes into account employees and the City paying the full Annual Required Contribution. These contribution rates will go into effect for Fiscal Year 2013-2014, unless an agreement is reached with the Federated bargaining units on retiree healthcare.

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014. This information can be found in the June 30, 2011, and June 30, 2012, retiree healthcare actuarial valuations.

Federated Retiree Healthcare	Valuation as of 06/30/11⁵	Valuation as of 06/30/12⁶
Employee Contribution Rate	7.26%	10.74%
City Contribution Rate	7.91%	11.93%
Total Contribution Rate	15.17%	22.67%
Net Change in Retiree Healthcare Contribution Rate	7.50%	

The following chart for the Federated retiree healthcare actuarial valuation describes the unfunded actuarial liability and funding ratios for the Plan as of June 30, 2011, and June 30, 2012. This shows the significant decrease in the unfunded liability and the resulting increase in the funding ratio due primarily to the retiree healthcare plan design changes.

⁵ Cheiron's Federated retiree healthcare actuarial valuation as of June 30, 2011 (Report dated January 2012)

⁶ Cheiron's Federated retiree healthcare actuarial valuation as of June 30, 2012 (Report dated January 2013)

Federated Retiree Healthcare	Valuation as of 06/30/11	Valuation as of 06/30/12
Discount Rate (Earnings Assumption)	7.5%	7.5%
Unfunded Actuarial Liability (UAL)	\$800.505 Million	\$604.668 Million
Net Change in UAL	-\$195.837 Million -24.46%	
Funding Ratio – Actuarial Value of Assets	14%	19%

POLICE AND FIRE DEPARTMENT RETIREMENT PLAN

Police and Fire Total Pension Unfunded Liability

During the December 2012, Board meeting, the Police and Fire Department voted to change the earnings assumption from 7.50% to 7.25%. It should be noted that the Federated Board voted to keep the earnings assumption the same (7.50%). The Police and Fire Retirement Board approved the contribution rate resolutions at the March 2013, Board meeting. These contribution rates include the elimination of the SRBR.

Police and Fire have different contribution ratios, but the actuarial valuation aggregates the unfunded liability and the ARC for the Plan as a whole. The unfunded liability for the Police and Fire pension plan increased by 36.06%.

Police and Fire Pension ⁷	Valuation as of 06/30/11 ⁸	Valuation as of 06/30/12 ⁹
Discount Rate (Earnings Assumption)	7.50%	7.25%
Unfunded Actuarial Liability (UAL)	\$510.3 Million	\$694.3 Million
Net Change in UAL	\$184 Million 36.06%	
Funding Ratio – Actuarial Value of Assets	84.0%	79.6%
Funding Ratio – Market Value of Assets	82.2%	75.9%

⁷ The Police and Fire pension actuarial valuation numbers include the elimination of the SRBR as of June 30, 2012

⁸ Cheiron's pension actuarial valuation as of June 30, 2011 (Report dated March 2012)

⁹ Cheiron's memo regarding FYE 2014 contribution rates assuming the SRBR is eliminated (Report dated December 21, 2012)

Police Pension Contribution Rates

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014. This information can be found in the June 30, 2011, and June 30, 2012, pension actuarial valuations.

Police Pension Contribution Rates	Valuation as of 06/30/11¹⁰	Valuation as of 06/30/12¹¹
Employee Pension Contribution Rate	11.13%	11.65%
City Pension Contribution Rate	56.57%	65.31% ¹²
Total Pension Contribution Rate	67.70%	76.96%
Net Change in Contribution Rate	9.26%	

Fire Pension Contribution Rates

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014.

Fire Pension Contribution Rates	Valuation as of 06/30/11¹³	Valuation as of 06/30/12¹⁴
Employee Pension Contribution Rate	11.21%	11.72%
City Pension Contribution Rate	58.43%	66.79% ¹⁵
Total Pension Contribution Rate	69.64%	78.51%
Net Change in Contribution Rate	8.87%	

Police and Fire Retiree Healthcare Actuarial Valuation

The health plan changes also resulted in a decrease in the retiree healthcare unfunded liability in the Police and Fire Department Retirement Plan. A net \$66.93 million (-11.21%) decrease was experienced in the total unfunded liability for retiree healthcare.

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014.

¹⁰ Cheiron's pension actuarial valuation as of June 30, 2011 (Report dated March 2012)

¹¹ Cheiron's memo regarding FYE 2014 contribution rates assuming the SRBR is eliminated (Report dated December 21, 2012)

¹² The City contribution rates for Police include the elimination of the SRBR for Fiscal Year 2013-2014

¹³ Cheiron's pension actuarial valuation as of June 30, 2011 (Report dated March 2012)

¹⁴ Cheiron's memo regarding FYE 2014 contribution rates assuming the SRBR is eliminated (Report dated December 21, 2012)

¹⁵ The City contribution rates for Fire include the elimination of the SRBR for Fiscal Year 2013-2014

Police and Fire Retiree Healthcare	Valuation as of 06/30/11	Valuation as of 06/30/12
Discount Rate (Earnings Assumption)	7.50%	7.25%
Unfunded Actuarial Liability (UAL)	\$596,764 Million	\$529,839 Million
Net Change in UAL	\$-66.925 Million -11.21%	
Funding Ratio – Actuarial Value of Asscts	9.2%	11.1%
Funding Ratio – Market Value of Assets	9.1%	10.6%

Police Retiree Healthcare Contribution Rates

The Police Officers' Association (POA) and the City reached an agreement in 2009 that limited the maximum annual contribution rate increase to 1.35% for the City and 1.25% for employees in the POA, with a cap of 10% for employees and 11% for the City. The numbers below reflect the maximum amount of increase for the members and the City. The contribution rates do not result in the full funding of the Annual Required Contribution.

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014.

Police Retiree Healthcare	Valuation as of 06/30/11¹⁶	Valuation as of 06/30/12¹⁷
Employee Contribution Rate	8.26%	9.51%
City Contribution Rate	8.96%	10.31%
Total Contribution Rate	17.22%	19.82%
Net Change in Retiree Healthcare Contribution Rate	2.6%	

The following chart demonstrates what the full ARC contribution rates would be for Police retiree healthcare in Fiscal Year 2012-2013, and Fiscal Year 2013-2014, if a cap was not in place.

¹⁶ Cheiron's retiree healthcare valuation as of June 30, 2011 (Report dated March 2012)

¹⁷ Cheiron's retiree healthcare valuation as of June 30, 2012 (Report dated January 2012)

Police Retiree Healthcare	Full ARC 2012-2013 Contribution Rates	Full ARC 2013-2014 Contribution Rates
Employee Contribution Rate	13.48%	12.74%
City Contribution Rate	14.63%	13.95%
Total Annual Required Contribution Rate	28.11%	26.69%
Net Change in Retiree Healthcare Annual Required Contribution Rate	-1.42%	

Fire Retiree Healthcare Contribution Rates

In 2011, the San Jose Fire Fighters (IAFF, Local 230) entered into an agreement with the City to cap the maximum increase in contributions rates for retiree healthcare. As with the POA, the IAFF agreed that the City maximum contribution increase would be 1.35% and the maximum employee contribution increase would be 1.25%, with a cap of 10% for employees and 11% for the City.

The following chart compares contribution rates from Fiscal Year 2012-2013, to the contribution rates for Fiscal Year 2013-2014.

Fire Retiree Healthcare	Valuation as of 06/30/11¹⁸	Valuation as of 06/30/12¹⁹
Employee Contribution Rate	6.11%	7.36%
City Contribution Rate	6.62%	7.97%
Total Contribution Rate	12.73%	15.33%
Net Change in Retiree Healthcare Contribution Rate	2.6%	

The following chart demonstrates what the full ARC contribution rates would be for Fire retiree healthcare in Fiscal Year 2012-2013, and Fiscal Year 2013-2014, if a cap was not in place.

¹⁸ Cheiron's retiree healthcare valuation as of June 30, 2011 (Report dated March 2012)

¹⁹ Cheiron's retiree healthcare valuation as of June 30, 2012 (Report dated January 2012)

Fire Retiree Healthcare	Full ARC 2012-2013 Contribution Rates	Full ARC 2013-2014 Contribution Rates
Employee Contribution Rate	13.31%	11.79%
City Contribution Rate	14.49%	12.94%
Total Annual Required Contribution Rate	27.80%	24.73%
Net Change in Retiree Healthcare Annual Required Contribution Rate	-3.07%	

Total Minimum City Contribution Amounts (if made at the beginning of the Fiscal Year) and Rates

In 2010-2011, the Retirement Boards adopted an annual required contribution methodology, which requires the City to pay a minimum ARC or a percentage of payroll, whichever is greater, for the Federated Retirement System and the Police and Fire Department Retirement Plan. In November 2012, the Federated Retirement System Board approved that for the Federated Retirement System Tier 2 plan, however, the City's contribution shall only be based on a percentage of payroll. Due to the independently estimated payroll projections by the Retirement Boards' actuary and the City Manager's Budget Office, the City calculations for the City retirement contributions for the Federated Retirement System Tier 1 plan and the Police and Fire Department Retirement Plan are based on the minimum ARC as required by the Boards or the ARC based on Board approved percentage of budgeted payroll as calculated by the City Manager's Budget Office, whichever is greater.

Because of this difference in methodology, as reported in the 2014-2018 General Fund Forecast, the 2013-2014 City contributions to the retirement plans is estimated to be \$275.8 million for all funds, which differs from the tables below. Please note that this figure will change based on recommendations included in the forthcoming City Manager's 2013-2014 Proposed Budget and City Council approval of the 2013-2014 Adopted Budget.

The following charts have been provided as an overview of the respective changes in the Board approved minimum contribution amounts and Board approved rates from Fiscal Year 2012-2013, and Fiscal Year 2013-2014.

PENSION	Total City Minimum Contribution 2012-2013	Total City Minimum Contribution 2013-2014
Police and Fire Pension ARC	\$106.145 Million	\$119.6 Million
Federated Pension ARC	\$102.972 Million	\$102.470 Million
Total Pension ARC	\$209.117 Million	\$222.07 Million
Net Change in Total Pension Minimum ARC	\$12.953 Million 6.19%	

RETIREE HEALTHCARE	Total City Minimum Contribution 2012-2013	Total City Minimum Contribution 2013-2014
Police and Fire Retiree Healthcare Minimum Contribution	\$14.922 Million	\$17.073 Million
Federated Retiree Healthcare Minimum Contribution	\$18.033 Million	\$26.833 Million
Total Retiree Healthcare Minimum Contribution	\$32.955 Million	\$43.906 Million
Net Change in Total Retiree Healthcare Minimum Contribution	\$10.951 Million 33.23%	

City and Employee Total Retirement Contribution Rates Fiscal Year 2013-2014

	City Contribution Rate (Pension & Retiree Healthcare)	Employee Contribution Rate (Pension & Retiree Healthcare)	Total Contribution Rate (Pension and Retiree Healthcare)
Police	75.62%	21.16%	96.78%
Fire	74.76%	19.08%	93.83%
Federated Tier 1	62.78%	16.71%	79.49%

Total Pension Unfunded Liability as of June 30, 2011, and June 30 2012

TOTAL PENSION UNFUNDED LIABILITY	Total Pension Unfunded Liability as of June 30, 2011	Total Pension Unfunded Liability as of June 30, 2012
Police and Fire Pension Unfunded Liability	\$510.3 Million	\$694.3 Million
Federated Pension Unfunded Liability	\$981.568 Million	\$1.078 Billion
Total Pension Unfunded Liability	\$1.492 Billion	\$1.772 Billion
Net Change in Pension Unfunded Liability	\$280 Million 18.77%	

Total Retiree Healthcare Unfunded Liability June 30, 2011, and June 30, 2012

TOTAL RETIREE HEALTHCARE UNFUNDED LIABILITY	Total Retiree Healthcare Unfunded Liability as of June 30, 2011	Total Retiree Healthcare Unfunded Liability as of June 30, 2012
Police and Fire Retiree Healthcare Unfunded Liability	\$596.764 Million	\$529.839 Million
Federated Retiree Healthcare Unfunded Liability	\$800.505 Million	\$604.668 Million
Total Retiree Healthcare Unfunded Liability	\$1.397 Billion	\$1.135 Billion
Net Change in Total Retiree Healthcare Unfunded Liability	-\$262 Million -18.75%	

Conclusion

These most recent actuarial valuations reflect the City's efforts to reduce the cost of our plans. For example, these actuarial valuations reflect the elimination of the Supplemental Retiree Reserve Benefit (SRBR) and healthcare plan changes. Although we have made significant progress, the most recent actuarial valuations reflect that the total unfunded liability for both pension and retiree healthcare is \$2.9 billion.

We will keep the City Council informed of any significant developments.

The full actuarial valuations used in this information memorandum can be found at <http://www.sanjoseca.gov/index.aspx?nid=2421>.



Alex Gurza
Deputy City Manager

For questions please contact Alex Gurza, Deputy City Manager at (408) 535-8150.

EXHIBIT 3

Memorandum

TO: All City Employees and Retirees

FROM: Debra Figone

SUBJECT: Retiree Healthcare Developments

DATE: March 4, 2008

Process Update

In December of last year, I sent out an informational memorandum to all City employees and retirees on the subject of retiree healthcare. The memo discussed key background information related to retiree health issues, the City Council's direction to develop a process to address retiree healthcare, and the process by which we proposed to gather input from all stakeholders. In light of new information, this memo serves as a brief update on the efforts put forth thus far on this important issue.

As a reminder, on August 28, 2007, the City Council directed staff to:

1. Engage stakeholders in identifying strategies and alternatives to address our unfunded liability for retiree healthcare. Stakeholders will include, at a minimum, employees, City Labor Alliance, Executive Management Forum, retiree associations, retirement boards, and South Bay Labor Council.
2. Continue to survey how other cities and counties are addressing their unfunded liabilities.
3. Engage experts, identified by the Administration and stakeholders, as necessary to evaluate strategies and approaches that are identified by stakeholders or have been implemented in other cities or counties.
4. Study how pre-full funding of benefits can be accomplished through a phased approach.

The first two items listed above are nearing completion as the facilitations and survey have been successfully executed by City staff in coordination with three consultants. Starting in December of 2007, our consultants have engaged the identified stakeholders to solicit their input and capture their ideas. A report summarizing all stakeholder feedback sessions, along with a survey of other organizations who are exploring ways to comply with GASB regulations will be completed in March. As an additional resource for all stakeholder groups, a website has been created to provide relevant background information as well as the most up-to-date documentation produced from each meeting. The website can be viewed at:
www.sanjoseca.gov/retireehealthcare.

Vested Benefit

In addition, the City Council requested additional information regarding the legal issues related to changing retiree healthcare benefits. In San José, retiree healthcare benefits are in the Municipal Code as part of the City's retirement plans. Because San José's retiree healthcare benefits are part of the City's retirement plans, the retiree healthcare benefit can be considered a "vested" benefit similar to the pension benefit itself. Based on this, we will not be recommending changes to retiree healthcare benefits (as specified in the Municipal Code) for current employees or current retirees at this time.

Although this information may help address the existing concerns about the possibility that the level of benefit (100% of the lowest cost plan for single or family coverage) would be changed for current employees and/or current retirees, there remains a very significant challenge in funding the benefit. The unfunded liability is currently between \$1.2 and \$1.65 billion, and we will continue to face the challenge of paying the long-term costs of providing these retiree healthcare benefits. The City and employees covered by the current benefit share an interest in addressing the costs of retiree healthcare benefits for many reasons, including that the Municipal Code specifies that the costs are shared between the City and employees.

Per the Municipal Code, cost-sharing for retiree medical insurance is split 50/50 between the City and employees. (For retiree dental insurance, the costs are shared between the City and employees at a ratio of eight to three.) In addition to funding the costs of the benefit for current employees and current retirees, we must continue to work together on other solutions to mitigate the significant cost of healthcare, including wellness programs and plan design changes.

I encourage you to continue participating in this process as we move forward. As requested by the City Council, staff will conduct further research and compile the information into a report which will offer ways to accomplish full pre-funding of benefits through a phased approach. It is imperative that the City of San José continue to learn and engage in solutions towards funding this significant liability.


Debra Figone
City Manager

EXHIBIT 4



Office of the City Attorney

RICHARD DOYLE, CITY ATTORNEY

March 7, 2008

Russell Crosby, Director
Retirement Services
1737 North First Street, Suite 580
San José, CA 95112

Re: Jones Day Advice Letter re Retiree Health Benefits and Vested Rights

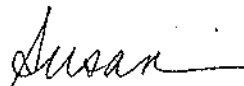
Dear Russell:

Enclosed pursuant to the request of the Police and Fire Retirement Board is a copy of the Advice Letter from Jones Day regarding "Retiree Health Benefits and Vested Rights".

The Advice Letter is marked "CONFIDENTIAL PROTECTED BY ATTORNEY-CLIENT PRIVILEGE". Please be advised that the City Council has waived the attorney-client privilege with respect to the Advice Letter and has authorized the City Attorney's Office to provide copies upon request.

If you have any questions, please feel free to contact the City Attorney's Office.

Very truly yours,


SUSAN DEVENCENZI
Senior Deputy City Attorney

RECEIVED
MAR 10 2008
RETIREMENT SERVICES

200 East Santa Clara Street, 16th Floor San José, CA 95113
tel (408) 535-1900 fax (408) 998-3131



555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
Facsimile: (213) 243-2539

Kirstin D. Poirier-Whitley: (213) 243-2380
kpoirierwhitley@jonesday.com

MEMORANDUM

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

TO: Richard Doyle, Esq.
City Attorney
City of San Jose

FROM: Kirstin D. Poirier-Whitley

DATE: 02/07/08

RE: Retiree Health Benefits and Vested Rights

You have asked Jones Day to consider whether the City of San Jose (the "City") may change the retiree medical and dental benefits currently provided by the City in light of the constitutional prohibition on impairment of contractual obligations. This memorandum includes three parts: (1) a summary of the relevant facts, (2) a statement of the issues presented with corresponding summary conclusions, and (3) a more detailed analysis of the issues presented.

My analysis and conclusions are based on a review of the materials furnished to me by the City, which include: (1) the City Charter; (2) current and former Municipal Code provisions governing retiree medical and dental benefits; (3) the most recent "Benefits Fact Sheet" and "Handbook" for the Federated City Employees' Retirement System and the Police and Fire Department Retirement Plan; and (4) excerpts from the current Memorandum of Agreement ("MOA") between the City and each collective bargaining unit. It has been represented to me, and I have assumed for the purposes of this memorandum, that the provisions relating to retiree medical and dental benefits in any prior versions of the Benefits Fact Sheets, Handbooks and MOAs did not differ materially from the current versions that have been furnished to me. My analysis and conclusions are based only on the documents provided; consequently, to the extent that there are other documents that govern or describe the retiree medical and dental program and which include additional or different descriptions of the City's obligations, the analysis and conclusions set forth herein may not apply.

Because of the length of this memorandum, I have provided a table of contents below to aid in your review of the document.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

TABLE OF CONTENTS

	Page
I. FACTUAL BACKGROUND.....	1
A. City Charter Governing Retirement Benefits	1
B. Federated Retiree Health Plans.....	2
1. History of the Plan	2
2. Current Provisions	2
C. Police and Fire Department Retiree Health Plans.....	4
1. History of the Plan	4
2. Current Provisions	5
II. ISSUES PRESENTED AND SUMMARY OF CONCLUSIONS	6
III. LEGAL ANALYSIS.....	11
A. Overview of Vested Rights Doctrine.....	11
1. Pension Rights Vest Upon Acceptance of Employment.....	11
2. Pension Does Not "Mature" Until Conditions Are Satisfied.....	14
3. Benefits May Be Changed for New Hires	15
4. Contribution Levels As Well As the Benefits Funded by Those Contributions May Become Vested.....	16
5. Retiree Health Benefits Are Probably Constitutionally Protected from Impairment under the "Vested Rights" Doctrine.....	17
6. Vested Rights May Not Be Bargained Away.....	20
7. Reasonable Modification Doctrine: Benefits May Be Modified Before Retirement If Comparable Offsetting Advantages Provided	22
8. The Scope of the Vested Right Is Limited By the Terms of the Relevant Contract.....	22
B. Analysis of the City's "Contract" With Its Employees, Former Employees and Retirees	34
1. The City Arguably Has Reserved the Right to Modify Retiree Health Benefits Prior to Retirement and, Thus, Is Not Impairing Vested Contractual Rights By Making Any of the Proposed Changes.....	34
2. To the Extent the City Has Not Reserved Its Right to Amend Retiree Health Benefits, Some Changes Still May Be Consistent with the Terms of the "Contract."	39
C. The Doctrine of Estoppel.....	43
1. Applicable Legal Principles.....	43
2. Analysis of City Communication Materials	46

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

I. FACTUAL BACKGROUND

A. City Charter Governing Retirement Benefits

Section 1500 of the San Jose City Charter (the "Charter") provides for the creation of a retirement plan or plans for the city employees and also states that "the Council may at any time, or from time to time, amend or change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."

Charter Section 1503 provides that all retirement systems in existence when the Charter was adopted are valid and will continue until otherwise provided by ordinance. Like Section 1500, however, this section also expressly states that "the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees."

Charter section 1504 guarantees minimum benefits and contributions for certain members of the City Police and Fire Departments. Under this section, pre-funding contributions must be made by the employees and the City in a ratio of three to eight. Additionally, Charter section 1504 requires that any retirement plan or system established for members of the Police and Fire departments must be actuarially sound.¹

Charter section 1505 similarly guarantees minimum benefits and contributions for certain officers and employees of the City who are not members of the Police or Fire Departments. Under this section, pre-funding contributions must be made by the employees and the City in a ratio of three to eight.²

¹ The guaranteed benefit is a monthly retirement allowance equal to fifty percent of his or her "final compensation" if the member completes twenty years of service and attains the age of fifty-five or completes twenty years of service and is disabled while employed by the City.

² The guaranteed benefit for service retirement is an annual retirement allowance equal to two percent of "final compensation" per year of "service" for the first twenty-five years of service plus one percent of such final compensation for each year of service above twenty-five years if the employee completes twenty-five or more years of service and attains the age of fifty-five or attains the age of seventy regardless of years of service. An officer or employee who has 10 years of service and is disabled also is entitled to certain minimum retirement benefits. It was represented to me that, because the terms "service" and "final compensation" are all defined with reference to the pre-1975 retirement plan ("Old Plan"), the City takes the position these minimum benefits apply only to the classification of employees covered by the Old Plan. I have not independently analyzed this issue.

In any event, the same restriction does not apply to the minimum contribution requirement. See Charter section 1505(f) (excluding individuals excluded under section 1501, officers and employees in the Police and Fire Departments, retirees, and persons in classifications excluded from participating in the Old Plan on the date the Charter was enacted).

B. Federated Retiree Health Plans

1. History of the Plan

In September 1984, the Council of the City of San Jose (the "Council") enacted ordinances granting medical benefits to members of the Federated Employees Retirement Plan (the "Federated Plan"), and in 1986, the Council approved ordinances adding dental benefits to the Federated Plan (collectively, the "Federated Retiree Health Plan"). Originally, the Federated Retiree Health Plan provided that a member retired for service or disability and who was entitled to credit for fifteen or more years of service (or five or more years of service for dental benefits) or who received a retirement allowance equal to at least thirty-seven and one-half percent of such member's compensation would be eligible to enroll in a medical or dental insurance plan sponsored by the City provided that the member retired upon leaving service and was enrolled in a health plan at that time. In addition, a member could only obtain medical coverage for a spouse if he or she was married at the time of retirement. Certain surviving spouses and children also were entitled to medical and dental benefits. Retired members and survivors were entitled to a subsidy equal to the premium for the lowest-cost medical insurance plan available to an employee of the City and for 100% of the cost of dental insurance offered as part of the City's employee benefits. These benefits were provided not only to active members and their families, but to existing retirees and survivors.

Since the Plan's enactment, a number of changes have been made. Most importantly, in 1988, the Council amended the Plan to extend retiree medical insurance to members who leave employment with enough service to have a nonforfeitable benefit but who cannot retire immediately upon leaving employment — i.e., "Deferred Vested Members." In 2006, the Council added a medical benefits account provision to address tax law issues and conformed other plan provisions.³

2. Current Provisions

Currently, the Federated Retiree Health Plan provides that a member who has retired for service or disability (whether immediately or on a deferred vested basis) and who is entitled to credit for fifteen or more years of service or who receives a retirement allowance equal to at least 37½% of such member's compensation (without regard to any offset for worker's compensation benefits) may enroll for medical insurance coverage in an eligible medical insurance plan. §§ 3.28.1950 and 3.28.1970.⁴ In addition, Section 3.28.1960 generally provides that a member's

³ Other minor changes not particularly relevant to the questions posed also were made. In 1986, the Plan was amended to provide that a worker's compensation offset is disregarded for the purposes of determining eligibility. In 1991, the Council amended the Plan to extend coverage to certain surviving spouses, and, in 1992, the Council amended the Plan to extend coverage to individuals who left employment pursuant to an early retirement incentive program. In 2002 and 2005 respectively, the Council amended the Plan to permit a spouse who is a guardian of a minor child to elect family medical coverage and to extend coverage to domestic partners.

⁴ All section references are to the San Jose Municipal Code, unless otherwise indicated.

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

surviving spouse, domestic partner and/or child who is receiving a survivor or optional allowance under the Federated Plan is entitled to continue receiving medical benefits provided that the member dies while still employed or after retirement and, at the time of death, the member either had 15 years of service or was receiving a retirement allowance equal to 37½% of such member's compensation (without regard to any offset for worker's compensation benefits). It further provides that the portion of the premium to be paid from the medical benefits account "shall be the portion that represents an amount equivalent to the lowest of the premiums for single or family medical insurance coverage... which is available to an employee of the city at such time as said premium is due and owing." § 3.28.1980.

Sections 3.28.2000 and 3.28.2020 provide that a member who retires for service or disability and who is entitled to at least 5 years of service credit or an allowance equal to at least 37½ % of such member's compensation (without regard to any offset for worker's compensation benefits) may enroll for dental insurance coverage in an eligible dental insurance plan. In addition, Section 3.28.2010 generally provides that a member's surviving spouse, domestic partner and/or child who is receiving a survivor or optional allowance under the Federated Plan is entitled to continue receiving dental insurance provided that the member dies while still employed or after retirement and, at the time of death, the member either had 5 years of service or was receiving a retirement allowance equal to 37½% of such member's compensation (without regard to any offset for worker's compensation benefits). Section 3.28.2030 provides that the Plan pay 100% of the cost of the dental insurance provided to members and survivors. Members or their survivors may enroll only in an "eligible dental plan" which is a plan "with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees." § 3.28.2040.

The Federated Retiree Health Plan is co-funded by employee and employer contributions in a specified ratio. Specifically, section 3.28.380(C) now provides that contribution rates to fund medical and dental benefits are established by the Board as determined by the Board's actuary and are borne by the City and the members of the Plan in a one-to-one ratio for medical benefits and an eight-to-three ratio for dental benefits. Although this co-funding ratio was first codified in 2006, it has been applied and reflected in the actuarial reports and other documentation connected with the Plan since inception.

As of August 2006, the Federated Retiree Health Plan provides that the City reserves its right to amend the Plan to limit medical or dental benefits as necessary to satisfy the requirements of Internal Revenue Code ("IRC") section 401(h); and more specifically that, in the event contributions required to fund the specified benefits would exceed the limits permitted by

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

IRC section 401(h), the portion of the premium to be paid by the Plan may be reduced as necessary to satisfy IRC section 401(h).⁵ §§ 3.28.1995 and 3.28.2045.

C. Police and Fire Department Retiree Health Plans

I. History of the Plan

In June 1984, the Council enacted ordinances granting medical benefits to members of the Police and Fire Department Plan (the "Police and Fire Plan"), and in 1986, the Council approved ordinances adding dental benefits to the Police and Fire Plan (collectively, the "P&F Retiree Health Plan"). Originally, the P&F Retiree Health Plan provided that a member retired for service or disability and who was entitled to credit for fifteen or more years of service or who received a retirement allowance equal to at least 37½% of such member's compensation would be eligible to enroll in a medical insurance plan sponsored by the City provided that the member retired upon leaving service and was enrolled in a health plan at that time. In addition, a member could only obtain medical coverage for a spouse if he or she was married at the time of retirement. Retired members and survivors were entitled to a subsidy such that they would be required to pay no more for medical insurance than an active employee in the classification from which the member retired. A member was entitled to dental insurance benefits if he retired for service or disability; there was no minimum service or allowance level requirement. The Plan paid 100% of the premium for available dental insurance. Certain surviving spouses and children also were entitled to medical and dental benefits. These benefits were provided not only to active members and their families, but to existing retirees and survivors.

Since the Plan's enactment, a number of changes have been made. For example, in 1991, the Plan was amended to extend medical and dental coverage to a spouse where marriage occurs after retirement. In 1992, the Plan was amended to extend coverage to Deferred Vested Members separating from service after July 5, 1992 with 20 or more years of service and their survivors. In 1998, pursuant to an arbitration award, the Plan was amended to enhance the premium level paid for persons retiring after February 4, 1996 to be the same as that paid under the Federated Retiree Health Plan -- i.e., the premium for the lowest-cost plan available. This change was also extended to individuals who had retired prior to February 4, 1996. In 2001, the Council added a medical benefits account provision to address tax law issues and add reimbursement for certain Medicare Part B payments. Coverage was extended to Deferred Vested Members who separated from service before July 5, 1992 and their survivors in May.

⁵ As you know, the contributions to the medical benefits account (plus contributions to fund life insurance protection) may not exceed 25% of total aggregate contributions (other than contributions for past service credits) to the retirement system.

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

2002. In 2006, the medical benefit account provision was reenacted in order to correct certain numbering errors.⁶

2. Current Provisions

Currently, Sections 3.36.1900 and 3.36.1920 provide that a member who (1) has retired for service or disability and either is entitled to credit for fifteen or more years of service or receives a retirement allowance equal to at least thirty-seven and one-half percent of such member's compensation, or (2) receives an allowance as a Deferred Vested Member with at least 20 years of service, may enroll for medical insurance coverage in an eligible medical insurance plan. If a retiree marries after retirement, he may add his spouse to coverage. § 3.36.1920C. In addition, Sections 3.36.1910 and 3.36.1920 generally provide that a member's surviving spouse, domestic partner and/or child is entitled to continue receiving medical benefits provided that either (1) the survivor is receiving a monthly allowance under part 8 of the Police and Fire Plan and, at the time of death, the member either had 15 years of service or was receiving a retirement allowance equal to 37½% of such member's compensation; or (2) the survivor is receiving a monthly allowance under part 11 of the Police and Fire Plan because of the death of a Deferred Vested Member with at least 20 years of service.

Sections 3.36.1930B and C provide that the portion of the premium to be paid from the medical benefits account beginning in 1998 shall be equivalent to the "lowest cost medical plan," but shall not exceed the actual premium for the eligible medical plan in which the member, former member or survivor enrolls." The "lowest cost medical plan" means that medical plan (single or family coverage as applicable) which is an "eligible medical plan" and which has the lowest monthly premium of all eligible medical plans then in effect. § 3.36.1930D. An eligible medical plan is a plan "with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees." § 3.36.1940.

Sections 3.36.2000 and 3.36.2020 provide that a member who (1) became a member of the Plan prior to July 1, 1998 and retires for service or disability, (2) who is retired for service or disability and either has at least 15 years of service credit or an allowance equal to at least 37½% of such member's compensation, or (3) is receiving an allowance as a Deferred Vested Member with at least 20 years of service, may enroll for dental insurance coverage in an eligible dental insurance plan. Sections 3.36.2010 and 3.36.2020 generally provide that a member's surviving spouse, domestic partner and/or child receiving an allowance under parts 8 or 11 of the Police

⁶ Other minor changes not particularly relevant to the questions presented also were made. For example, in 1991, the Plan also was amended to make technical changes substituting the term "spouse" for the terms "husband" and "wife," and to extend medical coverage to certain individuals who had transferred from the Central Fire District. In 1998, the Plan was amended to impose additional eligibility requirements for dental benefits for individuals becoming members on and after July 1, 1998. In 2002 and 2006 respectively, the Council amended the Plan to permit a spouse who is a guardian of a minor child to elect family medical coverage and to extend coverage to domestic partners.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

and Fire Plan is entitled to continue receiving dental insurance under certain conditions. Section 3.36.2030 provides that the Plan pay 100% of the cost of dental insurance provided to members and survivors. Members or their survivors may enroll only in an "eligible dental plan" which is a plan "with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees." § 3.36.2040.

The P&F Retiree Health Plan is co-funded by employee and employer contributions in a specified ratio. Specifically, section 3.36.575(C) now provides that contribution rates to fund medical and dental benefits are established by the Board as determined by the Board's actuary and are borne by the City and the members of the Plan in a one-to-one ratio for medical benefits and a three-to-one ratio for dental benefits. Although this co-funding ratio was first codified in 2000, it has been applied and reflected in the actuarial reports and other documentation connected with the Plan since inception.

II. ISSUES PRESENTED AND SUMMARY OF CONCLUSIONS

Question 1. *Can changes be made to the retiree medical and dental benefits provided by the City of San Jose in light of the constitutional prohibition on the impairment of contractual obligations?*

As you know, both the United States and the California Constitutions prohibit the impairment of contractual obligations. Although the terms and conditions of public employment generally are controlled by statute or ordinance rather than by contract, the right to compensation already earned—particularly in the form of a pension—has been held to be vested and therefore protected under these constitutional provisions. A public employee's vested contractual right to pension benefits *accrues upon acceptance of employment*. By entering public service an employee obtains a vested contractual right to earn a pension on terms substantially equivalent to those then offered by the employer and to earn additional pension benefits pursuant to improved terms conferred during continued employment. The vested contractual right that accrues upon acceptance of employment includes promised survivor benefits.

Vested pension rights have been held to include, not only the benefits payable at retirement, but the scope of a member's contribution obligation as defined under the terms of the contract. In addition, courts have extended the application of the vested rights doctrine to benefits, other than traditional service pensions, that have served as an inducement for continued service and which, at least partially, already have been earned through the performance of service to the employer. Based on these authorities, a court likely would conclude that the constitutional protection applicable to traditional pension rights would also be applicable to the Federated and P&F Retiree Health Plans.

Not all benefit changes will impair vested contract rights, however. First, as a general rule, the City may modify vested rights before an employee retires if such alterations bear some material relation to the theory of a pension system and its successful operation *provided that any*

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

changes which result in disadvantage to the employees' vested rights are offset by comparable new advantages. Because you have not identified any possible offsetting advantages that would accompany potential changes, I have not addressed how this "reasonable modification doctrine" would apply in this context.

Second, and more relevant to the City's inquiry, *any changes made to benefits that are consistent with, rather than in derogation of, the terms of the applicable "contract" should not impair vested rights.* Thus, as described in more detail below, determining whether a proposed change will impair the City's retiree medical and dental benefit "contract" with its employees involves a careful analysis of the terms of that contract. In this case, the "contract" between the City and its employees probably consists of the Municipal Code provisions setting forth the terms of the Federated and P&F Retiree Health Plans and, arguably, at least some of the overarching provisions of the Charter.

Of course, even if a change to retiree medical or dental benefits would not impair vested rights, some retirees or members might still argue that the City is estopped from altering their benefits. Given the lack of affirmative representations by the City regarding the duration or immutability of these benefits, I think members likely would have a difficult time making a persuasive argument in this regard.

Question 2. *Does the prohibition on impairment of contracts apply differently to different categories of retirement system members – i.e., retirees, current employees who have satisfied service eligibility requirements, current employees who have not satisfied service requirements, Deferred Vested Members and newly hired employees?*

As noted above, the terms of an employee's retirement benefits vest upon acceptance of employment. Thus, whether or not an employee has completed all of the service necessary for benefit eligibility generally has no bearing on that employee's vested contract rights. The only context in which an employee's years of completed service may be relevant is in connection with the analysis of a reserved right to amend as discussed under Question 3 below.

An employee does not have a vested right to benefits that are granted *after* the employee has left employment. Similarly, future employees generally do not have a vested right to any particular retirement benefits or to continuation of the retirement plan in operation prior to their employment. The employer generally is free to alter the terms of the benefits offered to new employees until they actually accept employment.

Once an employee has retired and begun receiving benefits, his or her benefits are no longer subject to the reasonable modification doctrine mentioned above. Changes, however, may still be made to the extent those changes are consistent with the terms of the contract governing those retirees.

Question 3. *What are the limitations, if any, on changes that may be made under the terms of the relevant "contract"?*

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

As noted above, benefits that are awarded after an employee leaves employment should not be constitutionally protected from impairment unless the individual exchanged other contractual rights for the new benefits. Accordingly, the City should be able to change the eligibility criteria, plan design or benefit level with regard to an employee who was first awarded coverage under the terms of the Plan after leaving City service – e.g., Deferred Vested Members under the Police and Fire Plan who left employment before 1992⁷ or members of either the Police and Fire Plan or the Federated Plan who retired prior to the implementation of retiree health benefits in 1984 who were allowed to enroll – without impairing a vested contract right.

As also noted above, *any changes made to benefits that are consistent with, rather than in derogation of, the terms of the applicable "contract" should not impair vested rights.* More specifically, if the employer has expressly reserved its right to make changes to a plan member's benefits, any change made consistent with that reserved right should not impair vested contract rights. In accordance with this principle, the City may take the position that its Charter reserves the Council's right to amend any retirement benefits, including retiree medical benefits, and that any changes it makes to the Federated or P&F Retiree Health Plans pursuant to this reserved right would not impair vested contract rights.

Given that the Charter's reservation of right only expressly applies to "officers or employees," however, a court likely would conclude that the Charter provision does not apply to those who have already left employment – e.g., retirees and their families or survivors. Moreover, active and retired members alike may make persuasive arguments that the reservation of right in the Charter was intended to apply only to traditional pension benefits and not to post-retirement medical benefits. In conclusion, while the City has a reasonable basis for concluding that it has reserved its right to amend retiree health benefits at least with regard to active employees, there is a substantial risk that even active employees could successfully argue that the Charter's "reservation of right" is inapplicable to retiree health benefits.

In addition, even assuming that the reserved right to amend in Article XV of the Charter does apply to the retiree medical and dental benefits, members who already have performed enough service to qualify for these benefits when they retire may argue that their benefits and the conditions for receiving them may not be modified. Specifically, these members reasonably may argue that they have performed or "substantially" performed under the terms of the contract – i.e., that their benefits have been fully earned – and that their already earned benefits may not be modified notwithstanding any reservation of right. If this argument were successful, the reservation of rights clause would effectively preserve the City's right to modify the terms of a benefit only for those who have not done all or "substantially" all they have to do to earn it.

⁷ When coverage for Deferred Vested Members was added to the Federated Retiree Health Plan in 1988, it appears that coverage was added only for those who became Deferred Vested Members after the date of the change, and not retroactively. Accordingly, this analysis is not applicable to the Federated Retiree Health Plan.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Finally, even if a court concluded that the reservation of right to amend in Article XV of the Charter applies, the court might also require the City to be internally consistent and apply the contribution and funding provisions in Article XV to its retiree medical and dental benefits as well.

Assuming that the reservation of right in the Charter does not apply to the Federated or P&F Retiree Health Plans, there are a few changes that may nonetheless be consistent with the terms of the applicable "contract" and, accordingly, should not impair vested rights. These changes are discussed below in answer to Question 3. In any event, as noted above, future employees have no vested right to receive benefits under the current retiree medical and dental programs.

Question 3.A. Assuming the reservation of right to amend in the Charter does not apply, may the City nevertheless change the number of years of service required before employees are eligible for benefits?

Each current employee, retiree or Deferred Vested Member who accepted employment or continued in employment after the relevant Plan was adopted or became applicable to that individual likely has a vested right to receive benefits based on the years-of-service eligibility criteria in effect at that time. Even if an employee does not yet have sufficient service credit to qualify for benefits, he or she has a right to continue to earn benefits under these terms. Any change in the years of service requirement likely would constitute an impairment of contract (unless the detriment imposed were permissibly offset by comparable advantages in accordance with the "reasonable modification doctrine" discussed in section III.A.7.).

Question 3.B. Assuming the reservation of right to amend in the Charter does not apply, may the City nevertheless change the level of benefit - i.e., the premium level - paid under the Federated and P&F Retiree Health Plans?

The current ordinances for both Plans provide for payment of an amount equivalent to 100% of the lowest of the available premiums for single or family medical insurance coverage. The Federated Retiree Health Plan has offered this benefit level from its inception; the P&F Retiree Health Plan, however, did not offer this benefit level until 1998, when it was extended to individuals retiring after February 4, 1996, pursuant to an arbitration award, and also to retirees (and their family members) who left service before that date.

A court likely would conclude that current employees and most Deferred Vested Members and retirees have a vested right to receive this promised level of benefits, and that any change made to this level of benefit by the City would impair that vested right (unless the detriment imposed were permissibly offset by comparable advantages in accordance with the "reasonable modification doctrine" discussed in section III.A.7.). The City, however, may reasonably conclude that those retirees and Deferred Vested Members who are members of the P&F Retiree Health Plan and who left the City's service prior to 1998 have a vested right only in

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

the premium amount under the terms of the Plan in existence when they left employment – i.e., a right to pay only as much as current employees in the job classification from which the member retired. Of course, notwithstanding the vested rights analysis, it appears that the City could not cut the benefit back to this level for people retiring between February 4, 1996 and 1998 without violating the arbitration award.

Question 3.C. Assuming the reservation of right to amend in the Charter does not apply, may the City nevertheless change the level of funding provided by employees and the City?

Under the current provisions of both the Federated and P&F Retiree Health Plans, contributions rates are established by the Board in consultation with its actuary. Thus, because the terms of the "contract" contemplate that the total contribution rate may vary, the Board should be free to increase the total contribution rate to be borne collectively by the City and the employees without impairing employees' vested rights.

Unlike the total contribution rate, however, the contribution *ratios* are express "contract" terms set forth under the provisions of the Plans. Thus, a court probably would conclude that the employees' right to contribute under the ratios currently set forth in the Municipal Code is vested and the City may not alter this ratio without impairing its contractual obligations (unless the detriment imposed were permissibly offset by comparable advantages in accordance with the "reasonable modification doctrine" discussed in section III.A.7.).

Question 3.D. Assuming the reservation of right to amend in the Charter does not apply, may the City nevertheless alter the design of the medical and dental plans made available to retired members and their survivors?

The current ordinances providing for retiree health benefits do not identify a specific medical or dental insurance plan design that must be offered to retired members, their families and survivors. Rather, these ordinances specify that the plans available to retirees will be those that are contracted for by the City as part of its employee benefits program for active employees. Thus, provided it makes similar changes to the plans made available to active employees, the City should be able to alter the design of the medical and dental insurance plans made available to its retirees without impairing the vested rights of current retirees, Deferred Vested Members, current employees or future employees. The City also could defend the somewhat more aggressive position that it may alter the design of dental and medical insurance offered under its retiree health plans but not those plans offered to active employees; however, there is a substantial risk that plan members could successfully challenge this position.

Question 4. What impact does the Meyers-Milias-Brown Act and City Charter Section 1111 have on the City's ability to make changes to retiree health benefits?

Health benefits are terms and conditions of employment that are subject to the meet and confer requirements of the Meyers-Milias-Brown Act. Thus, the City will be required to meet

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

and confer in good faith about any proposed changes to the available benefits. A collective bargaining unit may not bargain away individual statutory or constitutional rights. Thus, even if the City and the union agree to certain modifications, such modifications would be impermissible if employees had a vested right in the benefit being modified.

III. LEGAL ANALYSIS

Whether the City may alter its existing retiree health program involves an analysis of several questions: (1) Are retiree health benefits the type of benefits that are constitutionally protected from impairment under the so-called "vested rights" doctrine; (2) if so, what is the scope of the benefits that are protected under the relevant "contract"? In addition, even if the employees and retirees do not have vested contractual rights with regard to retiree health benefits, the question remains whether the City may be estopped from changing the program with regard to current employees and retirees.

In that regard, the following analysis includes three parts: (1) an overview of the so-called "vested rights" doctrine, including an analysis of its application to retiree health benefits generally, (2) an analysis of the terms of the Federated and P&F Retiree Health Plans in light of "vested rights" principles, and (3) a discussion of estoppel considerations.

A. Overview of Vested Rights Doctrine

1. Pension Rights Vest Upon Acceptance of Employment

Both the United States and the California Constitutions prohibit the impairment of contractual obligations.⁸ Although the terms and conditions of public employment generally are controlled by statute or ordinance rather than by contract,⁹ the right to compensation already earned—particularly in the form of a pension—has been held to be vested and therefore protected under these constitutional provisions.¹⁰

It has been recognized that public pension benefits were created to serve "as an inducement to enter and continue in public employment"¹¹ and to "provide agreed subsistence to retired public servants who have fulfilled their employment contracts."¹² A public employee's vested contractual right to pension benefits *accrues upon acceptance of employment*.¹³ Although

⁸ U.S. Const. art. I, § 10; Cal. Const. art. I, § 9.

⁹ Markman v. County of Los Angeles, 35 Cal. App. 3d 132, 134-35 (1978).

¹⁰ See, e.g., Allen v. Bd. of Admin., 34 Cal. 3d 114, 120 (1984).

¹¹ Quintana v. Bd. of Admin., 54 Cal. App. 3d 1018, 1021 (1976).

¹² Carman v. Alvord, 31 Cal. 3d 318, 325 n.4 (1982); Bellus v. City of Eureka, 69 Cal. 2d 336, 351 (1968).

¹³ Allen v. Bd. of Admin., 34 Cal. 3d at 120.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

"an employee does not earn the right to a full pension until he has completed the prescribed period of service, . . . he has actually earned some pension rights as soon as he has performed substantial services for his employer."¹⁴ "By entering public service an employee obtains a vested contractual right to earn a pension on terms substantially equivalent to those then offered by the employer"¹⁵ and to earn additional pension benefits pursuant to improved terms conferred during continued employment.¹⁶ This means that the employee has a vested right not merely to preserve the pension benefits already earned, but also to continue to earn benefits under the terms previously promised through continued service.¹⁷ Thus, whether an employee has earned enough service to make the benefits nonforfeitable and, thus, "vested" in that sense has no bearing on whether the benefits are constitutionally "vested" and protected from impairment.

The vested contractual rights that accrue upon acceptance of employment include promised survivor benefits. Although a public employee's survivor does not have a *separate and independent* vested right to survivor benefits prior to the employee's death,¹⁸ such benefits are treated as part of the pension benefits offered to the employee in return for the employee's

¹⁴ Kern v. City of Long Beach, 29 Cal. 2d 848, 855 (1947).

¹⁵ Carman, 31 Cal. 3d at 325.

¹⁶ Betts v. Bd. of Admin., 21 Cal. 3d 859, 866 (1978) ("An employee's contractual pension expectations are measured by benefits which are in effect not only when employment commences, but which are thereafter conferred during the employee's subsequent tenure."); United Firefighters v. City of Los Angeles, 210 Cal. App. 3d 1095, 1102 (1989).

¹⁷ Legislature v. Ep., 54 Cal. 3d 492, 530 (1991) ("We conclude that incumbent legislators had a vested right to earn additional pension benefits through continued service . . ."); Pasadena Police Officers Ass'n v. City of Pasadena, 147 Cal. App. 3d 695, 703 (1983) ("[T]he employee has a vested right not merely in preservation of benefits already earned pro rata, but also, by continuing in work until retirement eligibility, to earn the benefits, or their substantial equivalent, promised during his prior service").

¹⁸ Packer v. Bd. of Retirement of the Los Angeles County Peace Officers' Retirement System, 35 Cal. 2d 212, 215 (1950); see also Dickey v. Retirement Board of the City and County of San Francisco, 16 Cal. 3d 745, 749 fu. 2 (1976) (noting that right of wife of public employee to a pension does not vest on her husband's acceptance of employment but upon the happening of the contingency upon which her benefits are payable); Frazier v. Tulare County Bd. of Retirement, 42 Cal. App. 3d 1046, 1049 (1974) (noting that neither employee's designated beneficiary nor his wife had a separate vested right to receive any benefits from the pension system since provisions for them were merely a part of the employee's pension right); Henry v. City of Los Angeles, 201 Cal. App. 2d 299 (1962) (finding that disadvantageous modification to widow's pension was unconstitutional because it was not accompanied by a comparable benefit).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

services.¹⁹ As a result, those benefits should be protected from impairment under the same principles applicable to the employee's own retirement benefits.²⁰

A former employee, however, does not have a vested right to benefits granted after the employee leaves employment.²¹ For example, in Pasadena Police Officers Ass'n v. City of Pasadena, the city amended its charter in 1969 to include a cost of living adjustment to retirement benefits.²² The city sent an election form to its retirees allowing them to opt-in to the new system, effectively giving up their fixed pensions in favor of a system under which their benefits would be subject to a cost of living adjustment ("COLA"). The members experienced a substantial increase in their pension benefits as a result of opting in to the new system. The city amended its charter again in 1981 to cap the COLA at 2%. The COLA was uncapped when it was initially introduced in 1969. The city excepted from the 2% cap those employees who had retired between 1969, when the uncapped COLA was introduced, and 1981, when the COLA was capped. Retirees who had retired prior to 1969, and so were not covered by the exception, sued, arguing that they had a vested right to receive the COLA benefits which had been put into place in 1969.²³

The court stated that employees who had retired prior to the COLA's enactment in 1969 "had no vested contractual right, based on *the contract in effect during their employment*, to continuation of the COLA benefit." (emphasis in original).²⁴ The court, however, went on to find that the members' election to opt-in to the new system had effectively created a new contract which was binding on the city. Therefore, the city could not reduce the COLA without infringing on the pensioners' rights under their contract with the city.²⁵

¹⁹ Packer, 35 Cal. 2d at 215 (benefit to widow is "one of the elements of compensation held out to her husband."); Henry, 201 Cal. App. 2d at 313 ("[The widow's right to receive a pension following the demise of her husband] is an element of the husband's contractual compensation and earned by him by performing services for the city.")

²⁰ See Packer, 35 Cal. 2d at 216 (widow's pension was part of husbands' pension benefits and subject to reasonable modification); Henry, 201 Cal. App. 2d at 314 (same). For a discussion of the "reasonable modification doctrine, see Section III.A.7.

²¹ Olson v. Cory, 27 Cal. 3d 532, 542 (1980) (stating that pensioners whose benefits are based on service that terminated prior to a change in the law have no vested right to benefits resulting from that change).

²² 147 Cal. App. 3d 695 (1983).

²³ Id. at 701.

²⁴ Id. at 706.

²⁵ Id.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

2. Pension Does Not "Mature" Until Conditions Are Satisfied

While the right to pension benefits vests upon employment, the right to immediate payment of those benefits does not necessarily mature until certain conditions have been satisfied. Events may occur that will prevent the benefit from maturing and the employee from becoming entitled to payment. For example, Miller v. State involved a challenge to an amendment to California Government Code Section 20981 that lowered the mandatory retirement age from age 70 to age 67.²⁶ The plaintiff was a civil servant who had been employed by the state for over 30 years. The pension that the plaintiff received as a result of being forced to retire at age 67 was substantially lower than that which he would have received had he retired at age 70. The plaintiff sued the state, arguing that he had a vested right in continuing to be employed by the state until age 70, based on the mandatory retirement age that was in effect when he began his employment with the state. The plaintiff additionally argued that the amendment unconstitutionally impaired his vested pension rights by forcing him to accept a pension substantially less than he would have received had he worked until age 70.

The court rejected the plaintiff's first argument, noting that public employment is held by statute not by contract and that no public employee has a vested contractual right to continued employment beyond that fixed by law.²⁷ Thus, the power of the legislature to reduce the tenure of a civil servant cannot be limited by contract.²⁸ The court also rejected the plaintiff's second argument that his pension rights were nevertheless impaired. The court instead found that the plaintiff's loss of pension benefits resulted from the occurrence of a condition subsequent to the accrual of those rights rather than from an impairment of those rights. The court noted that although the plaintiff's right to a pension was vested, he was not assured of receiving maximum benefits. Thus, "the power of the Legislature, unfettered by contract, reduced the mandatory age of retirement and thereby created the condition subsequent the occurrence of which not only terminated plaintiff's employment but also defeated his expectation of additional salary and a larger retirement allowance."²⁹

²⁶ 18 Cal. 3d 808 (1977).

²⁷ Id. at 813.

²⁸ Id. at 814.

²⁹ Id. at 817. The court reached a similar result in Tante v. Board of Administration of the Public Employees' Retirement System, 93 Cal. App. 3d 615 (1979). In this case, a public employee sued when his application to retire with retirement benefits when he turned 67 was declined because he had not yet served 5 years. On the date that the plaintiff became employed, Government Code section 20981 provided that state employees were required to retire upon attaining the age of 67. Three years after the plaintiff began his employment, this section was amended to require retirement at age 70 instead of age 67. Government Code section 20393 stated that only employees with 5 years of service or more were eligible for retirement benefits. Before the legislature increased the mandatory retirement age, however, the Board of Retirement's past practice had been to allow employees who reached the age of 67 without 5 years of service to receive a service retirement pension based on their years of service. The plaintiff argued that he had a vested right to receive a pension based on this practice. Id.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

As indicated above, however, once the employee accepts employment, the employer may not alter the contract terms that an employee must satisfy for the benefits to mature.³⁰

3. Benefits May Be Changed for New Hires

The contractual basis of the right to retirement benefits is "the exchange of an employee's services for the pension right offered by the statute."³¹ Thus, in contrast to current employees and retirees, future employees generally do not have a vested right to any particular retirement benefits or to continuation of the retirement plan in operation prior to their employment.³² The employer generally is free to alter the terms of the benefits offered to new employees – e.g., by amending statutory language – until they actually accept employment, at which point their retirement benefit rights vest.³³ In other words, so long as the employer does not alter the applicable statutes or other contractual language, new employees will continue to acquire vested rights in the existing retirement program as they are hired.³⁴

Although a governmental employer generally is free to amend or repeal a statute providing retirement benefits with regard to future employees, one court has suggested that an employer might contractually bind itself *not* to alter such statutory benefits. But, it went on to say that such "[a] promise not to change the character of a pension program as to new employees is a fundamental constraint on the freedom of action" of the applicable legislative body.³⁵ Accordingly, a court should not interpret a contractual provision as containing such a promise unless it has "no other reasonable choice" – that is, where the provision "clearly abdicates the legislative power to make changes in the pension system for prospective employees."³⁶

(continued...)

at 617. The court held that the Board of Retirement's past generous policy did not create a vested interest and so the plaintiff was not entitled to receive a pension before he had accumulated five years of service. *Id.* at 619.

³⁰ *Legislature v. Eu*, 54 Cal. 3d at 530; *Pasadena Police Officers' Ass'n*, 147 Cal. App. 3d at 703.

³¹ *Claypool v. Wilson*, 4 Cal. App. 4th 646, 670 (1992).

³² *Legislature v. Eu*, 54 Cal. 3d 492, 534 (1991); *California Assoc. of Prof. Scientists ("CAPS") v. Schwarzenegger*, 137 Cal. App. 4th 371, 383 (2006); *Claypool v. Wilson*, 4 Cal. App. 4th 646, 670 (1992); *San Francisco Fire Fighters v. City and County of San Francisco*, 152 Cal. App. 3d 113, 120 (1984); *Whitmore v. City of Bureka*, 29 Cal. App. 3d 28, 34 (1972); *Estes v. City of Richmond*, 249 Cal. App. 2d 538, 545 (1967).

³³ See *CAPS*, 137 Cal. App. 4th at 385.

³⁴ *Id.* at 385.

³⁵ *Id.* at 383 (quoting *Claypool*, 4 Cal. App. 4th at 670).

³⁶ *Id.* at 383-84. In the *CAPS* case, the state entered a memorandum of understanding ("MOU") with CAPS effective from July 1, 2003, through July 1, 2006. Section 8.8 of the MOU contained language providing that "[P]ursuant to Government Code [section] 21070.5, new employees who meet the criteria for CalPERS membership would be enrolled in the First Tier plan and have the right to be covered under the Second Tier plan within 180 days

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

To recap, under established vested rights principles, an employer generally is free to alter the retirement benefits that will be provided to new employees -- e.g., by amending governing statutory language -- until those employees actually accept employment, provided that the employer has not clearly bargained away its right to do so.

4. Contribution Levels As Well As the Benefits Funded by Those
Contributions May Become Vested

Vested pension rights have been held to include, not only the benefits payable at retirement, but the scope of a member's contribution obligation *as defined under the terms of the contract*. For example, in Allen v. City of Long Beach, the city attempted to make a number of changes to the pension rights of its employees.³⁷ One of these changes was to increase the amount of each employee's contribution from 2% of his salary to 10% of his salary. The court held that this change was unlawful because it substantially increased the cost of pension protection to the employee without any corresponding increase in the benefits he could expect to receive upon retirement.³⁸

Contribution levels may be modified, however, if such modification is consistent with, rather than in derogation of, the terms of the contract (see discussion in section III.A.8.(c) below).

(continued...)

of the date of their appointment." In 2004, the state enacted a new law creating an alternate defined contribution retirement program effective during the first two years of employment for employees first hired after the effective date of the law. As part of the new law, a new subdivision (c) was added to section 21070.5, which provided that, for members subject to the new retirement program, the 180-day election period for electing Second Tier participation did not commence until the first day after the two years spent in the alternate retirement program.

CAPS alleged that application of the alternate retirement program to new employees conflicted with Section 8.8 of the MOU, and therefore violated the constitutional prohibitions on impairment of contracts. The court noted that "[w]hen a collective bargaining agreement purports to secure pension rights for future employees, it may well be that the federal and state contract clauses protect the rights of future employees," but concluded that it "need not decide that issue" because the MOU at issue did not contain such a promise.

The court concluded that section 8.8 of the MOU did not suggest the state was bargaining away its sovereign right to change the character of pension rights for future employees. The statutory provision addressed in the MOU was one that was applicable to employees in a bargaining unit only if incorporated in an MOU. Thus, the MOU language was necessary to make the statutory provision applicable to employees in the CAPS bargaining unit. The court reasoned further that, so long as the Legislature made no further changes to the applicable statute, CAPS' new employees had a right to First Tier benefits unless they timely elected Second Tier benefits. There was nothing in the MOU, however, that committed the Legislature to maintaining the same statutory benefits for all prospective CAPS employees through the effective period of the MOU. In other words, the MOU simply incorporated, and thereby made operative, one part of existing statutory retirement law, which was itself subject to future modification by the Legislature.

³⁷ 45 Cal. 2d 128, 130 (1955).

³⁸ *Id.* at 131.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

5. Retiree Health Benefits Are Probably Constitutionally Protected from Impairment under the "Vested Rights" Doctrine.

It appears that, depending upon the nature and terms of the "contract" involved, retiree health benefits, like pension benefits, may become "vested" and constitutionally protected from impairment. Courts have extended the application of the vested rights doctrine to benefits, other than traditional service pensions, that have served as an inducement for continued service and which, at least partially, already have been earned through the performance of service to the employer.³⁹ For example, in California League of City Employee Ass'n v. Palos Verdes Library District,⁴⁰ the court held that employees had a contractual vested right to certain longevity benefits, which were awarded after a designated number of years of service. The court noted that the benefits were (a) important to the employees, (b) had been an inducement to remain employed, and (c) were a form of compensation already (at least partially) earned. The court reasoned that, with regard to employees who already had performed service toward the attainment of these benefits, "it would be grossly unfair to allow [the employer] to eliminate such benefits and reap the rewards of such long-time service without payment of an important element of compensation for such services."⁴¹

Following the reasoning in California League, Thorning v. Hollister School District,⁴² is the first case in California to extend the vested rights doctrine to protect retirement health benefits. In Thorning, the court considered the decision by a school district board to eliminate retirement health benefits provided to retired board members under a declaration of policy previously adopted by the board. In 1988, during the terms of office of the plaintiffs and pursuant to Government Code section 53201, the school district adopted Policy No. 9250(a) as part of the "Bylaws of the Board." Policy No. 9250(a) provided: "Any members retiring from

³⁹ Thorning v. Hollister Sch. Dist., 11 Cal. App. 4th 1598 (1992) (retiree health); Cal. League of City Employee Ass'ns v. Palos Verdes Library Dist., 87 Cal. App. 3d 135 (1978) (longevity benefits); Frank v. Board of Administration, 56 Cal. App. 3d 236 (1976) (industrial disability retirement benefits; "No reason exists in plaintiff's case to apply a different rule to disability retirement benefits than to service retirement benefits."); see also Ynungman v. Nev. Irrigation Dist., 70 Cal. 2d 240 (1969) (not mentioning vested rights doctrine, but concluding that plaintiffs had stated a claim for a contractual right to salary increase under step classifications); Ivens v. Simon, 212 Cal. App. 2d 177 (1963) (same); cf. San Bernardino Public Employees Assn. v. City of Fontana, 67 Cal. App. 4th 1215, 1223-24 (1998) ("San Bernardino") (terms and conditions of employment set forth exclusively in an MOU of fixed duration cannot "become permanently and irrevocably vested" and may be changed upon expiration of the MOU); Creighton v. Regents of Univ. of Cal., 58 Cal. App. 4th 237, 243-45 (1997), *rev. denied*, 1998 Cal. Lexis 51 (holding that early retirement was a one-time limited incentive for early retirement, accompanied by an express disclaimer, and could be withdrawn before acceptance without violating vested rights); Viehle v. State, 104 Cal. App. 3d 392 (1980) (change to statute governing the calculation of interest on withdrawn contributions was related to an employment right, not a retirement benefit or right, and was not protected under the contract clause).

⁴⁰ 87 Cal. App. 3d 135 (1978).

⁴¹ *Id.* at 140.

⁴² 11 Cal. App. 4th 1598 (1992) *review denied*, 1993 Cal. LEXIS 1557 (1993).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

the [school district] Board after at least one full term shall have the option to continue the health and welfare benefits program if coverage is in effect at time of retirement, except that Board members who have served less than twelve (12) years, but at least one term shall pay the full cost of health and welfare benefits coverage." In July, 1990, the board revised this policy to provide that "[t]he Board *may* authorize payment of premiums for retired members who have served twelve (12) years or more." On November 27, 1990, the board voted to continue payment of health benefits for the plaintiffs for the next ten years. The plaintiff's terms ended as of December 1, and on December 11, 1990 the new board voted to suspend payment of plaintiffs' health benefits.

The court looked to Policy No. 9250(a) as adopted in 1988 as the governing contract setting forth the plaintiffs' rights to retirement health benefits. It concluded that the July, 1990 change in the Policy -- a change made prior to the plaintiffs' retirement -- could not diminish the benefits already awarded to the plaintiffs during their term of office.⁴³ Considering the three criteria established by the California League case, the court indicated that the rights set forth under the 1988 Policy were akin to pension benefits and concluded that they vested because they were a part of the compensation promised to the board members and, as such, were important to the board members as an inducement for their continued service on the board and a factor in their ultimate decision to retire. The court further concluded that, because the terms of the policy provided that only individuals with less than 12 years of service were required to contribute to the cost of coverage, the vested contractual right for the plaintiffs (who had more than 12 years of service) included the right to have the employer pay the cost of their coverage.⁴⁴

Arguably, the scope of Thorning is limited given that it involved only *elected officials* of the school district, and not public employees generally. Although the general rule is that current salary benefits for public employees do not vest and may be changed by the employer⁴⁵ -- subject of course to collective bargaining restraints, as applicable -- there is an exception for elected or appointed officials. Salaries for elected or appointed officers vest for the term of office, although they may be changed for a new term.⁴⁶ Consequently, salaries, as well as deferred compensation, of elected officials may not be decreased during the term of office. In fact, in concluding that the 1990 revision to the Policy was not controlling, the Thorning court relied heavily on vested rights cases dealing with elected officials, citing them for the proposition that

⁴³ Id. at 1606.

⁴⁴ Thorning, 11 Cal. App. 4th at 1598; accord 83 Op. Cal. Att'y Gen. 14 (2000) (city had vested contractual obligation to provide health benefits to former city council member under resolution adopted pursuant to Government Code section 53201); 67 Op. Cal. Att'y Gen. 510, 513 (1984) (health insurance benefits "conferred for life, in the nature of deferred compensation and as an inducement of continued service, pursuant to an official declaration of policy may not be discontinued").

⁴⁵ Butterworth v. Boyd, 12 Cal. 2d 140, 150 (1938).

⁴⁶ Olson v. Cory, 27 Cal. 3d 532 (1980).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

salary and other elements of compensation conferred during a *term of public office* cannot be diminished during that term.⁴⁷

Notwithstanding the facts and cited authorities in Thorning, Thorning's conclusion that retiree health benefits may vest upon acceptance of employment should be equally applicable to all public employees and retirees. Although the Thorning decision does cite vested rights cases addressing elected officials, these cases actually describe vested rights principles uniformly applicable to the pensions of all public employees. Moreover, Thorning does not expressly rely on plaintiffs' status as elected officials or to any distinction between elected officials and other public employees as a basis for its conclusion that retiree health benefits are a form of compensation that vests. Finally, the Thorning court ultimately analogizes retiree health benefits, not to salary, but to pension benefits which, as already noted, vest upon acceptance of employment for all public employees.⁴⁸

The holding in Thorning also arguably is limited to retirees given the court's reasoning that the health benefits at issue were "of importance to the board members as an inducement for their continued service on the board and as a factor in their decision to retire."⁴⁹ The contractual change that the court invalidated, however, was the July 1990 change making retiree health benefits discretionary – which occurred prior to the plaintiffs' retirement.

Thorning's precedential value also might be questioned based on the fact that, roughly six years after Thorning was decided, the California League decision was criticized in San Bernardino Public Employees Assoc. v. Fontana.⁵⁰ Like California League, the San Bernardino case dealt with a form of longevity pay, as well as certain leave accruals, but it reached a contrary conclusion. The San Bernardino court criticized California League for determining that benefits acquire the protection of the contract clause whenever those benefits are "important" to employees. The primary basis for the court's decision in San Bernardino, however, was that the vested rights cases were factually distinguishable on the grounds that the longevity benefits before it were not a statutorily based right of retirement, but were terms and conditions of active employment contained in a collective bargaining agreement of fixed duration. Accordingly, the benefits at issue were not "permanently and irrevocably vested" but could be renegotiated when the bargaining agreements expired. Notwithstanding its criticism of California League, I do not believe that San Bernardino alters the fundamental conclusion that retiree health benefits are a form of deferred compensation that may vest upon acceptance of employment.

⁴⁷ Citing to Olson, at 539 ("if salary benefits are diminished by the Legislature during a judge's term . . . the judge is nevertheless entitled to the contracted-for benefits during the remainder of such term.") and to Betts, 21 Cal. 3d at 863 & 866 (elements of compensation conferred during a term of public office become contractually vested).

⁴⁸ Allen v. Bd. of Admin., 34 Cal. 3d at 120.

⁴⁹ 11 Cal. App. 4th at 1607.

⁵⁰ 67 Cal. App. 4th 1215 (1998).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

In summary, notwithstanding the foregoing considerations, and although there appears to be only one decision -- which is unpublished -- that cites Thorning with approval,⁵¹ I believe that it would be difficult to argue that retiree health benefits are not elements of deferred compensation that, like pension benefits, may vest upon acceptance of employment.

6. Vested Rights May Not Be Bargained Away

Employer-employee relations between the City and its union-represented employees are governed by the Meyers-Milius-Brown Act ("MMBA").⁵² Employee collective bargaining units are authorized to represent their members in all matters relating to employment conditions and employer-employee relations, including wages, hours and other "terms and conditions of employment."⁵³ Because the phrase "wages, hours and other terms and conditions of employment" in the MMBA tracks the language of the National Labor Relations Act ("NLRA"), California courts and the Public Employee Relations Board (which decides cases under the MMBA) look to National Labor Relations Board ("NLRB") decisions for guidance when applying the MMBA. Under the NLRA, pension and post-retirement health care benefits for current employees are "terms and conditions of employment" about which employers must negotiate and may not unilaterally change.⁵⁴ Nevertheless, a collective bargaining unit may not bargain away individual statutory or constitutional rights that "flow from sources outside the collective bargaining agreement itself,"⁵⁵ and collective bargaining agreements may not contain

⁵¹ Mayers v. Orange Unified School District, 2003 Cal. App. Unpub. LEXIS 6346 (June 30, 2003).

As discussed later in this letter, another related case, Sappington v. Orange Unified School District, 119 Cal. App. 4th 949 (Cal. App. 4th Dist. 2004), rev. denied, decertification request denied, 2004 Cal. LEXIS 8870 (Sept. 15, 2004) found it unnecessary to determine whether the retiree health rights at issue were "vested" because the terms of the contract did not support the rights claimed by the plaintiffs. Two other cases that preceded Thorning did not expressly address vested rights, but concluded that the counties involved did not have a mandatory duty to provide certain retiree health benefits under the statute at issue. Ventura County Retired Employees' Ass'n v. County of Ventura, 228 Cal. App. 3d 1594, 1598-59 (1991) review denied, (1991) ("Ventura County"); Orange County Employees' Ass'n v. County of Orange, 234 Cal. App. 3d 833, 843-44 (1991) review denied (1991) ("Orange County").

⁵² Gov. Code § 3500 et seq.

⁵³ Gov. Code § 3504.

⁵⁴ Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass, 404 U.S. 157, 159 (1971). And see, e.g., Betts, 21 Cal. 3d at 863 (a public employee's retirement benefit constitutes an element of compensation).

⁵⁵ See San Bernardino Public Employees Ass'n v. City of Fontana, 67 Cal. App. 4th 1215, 1225 (1998); Wright v. City of Santa Clara, 213 Cal. App. 3d 1503, 1506, (1989); Phillips v. State Pers. Bd., 184 Cal. App. 3d 651, 660, (1986) disapproved on other grounds in Coleman v. Dep't of Pers. Admin., 52 Cal. 3d 1102, 1123 n.8 (1991) (holding that a collective bargaining agreement could not waive an employee's right to due process); cf. Soe. Servs. Union v. Bd. of Supervisors, 222 Cal. App. 3d 279, 287 (1990) (because Labor Code expressly authorizes agreements between public employees and their employers for payment of health care costs through payroll deductions, such an agreement is not a waiver of rights under the State's wage exemption statutes).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

provisions that abrogate fundamental constitutional rights.⁵⁶ Such constitutional rights include pension rights.⁵⁷

California law is consistent with analogous private sector cases,⁵⁸ as well as cases in other states dealing with public employment rights,⁵⁹ which have followed the rule that vested contractual rights may not be bargained away without the consent of the employee. For example, the Court of Appeals for the Sixth Circuit stated in Yard-Man that while a union may

⁵⁶ Soc. Servs. Union, 222 Cal. App. 3d at 287; Phillips, 184 Cal. App. 3d at 660 (even though statute permitted the parties to a collective bargaining agreement to supplant existing procedures by which employees are discharged or disciplined, an employee's right to due process cannot be waived in a collective bargaining agreement).

⁵⁷ San Bernardino, 67 Cal. App. 4th at 1221. In San Bernardino, a labor union sought to set aside provisions in several memoranda of understanding ("MOUs"), relating to reductions in personal leave accrual and longevity pay benefits. 67 Cal. App. 4th 1215. The court held that the fringe benefits at issue were the negotiable terms and conditions of employment, distinguishing them from vested rights such as pension rights. While the latter are entitled to contract clause protection, the former could not become irrevocably vested because they were a product of collective bargaining, and provided for in collective bargaining agreements of fixed duration, and no outside statutory source gave the employees additional protection or entitlement to future benefits. Id. at 1223-25.

⁵⁸ See e.g., United Mine Workers Health & Retirement Funds v. Robinson, 455 U.S. 562, 575 n.14 (1982) ("under established contract principles, vested retirement rights may not be altered without the pensioner's consent"); Allied Chem. & Alkali Workers of Am. v. Pittsburgh Plate Glass Co., 404 U.S. 157, 182 n.20 (1971) (same); Weimer v. Kurz-Kasch, Inc., 773 F.2d 669 (6th Cir. 1985) (same); Williams v. WCI Steel Co., 170 F.3d 598, 605-06 (6th Cir. 1999) (language of prior agreements gave employees and retirees a vested contractual right to trust residue that could not be the subject of future collective bargaining); Bokuniewicz v. Puroator Products, Inc., 907 F.2d 1396, 1401-02 (3rd Cir. 1990) (disabled employees' rights to disability pension was vested at time of closure agreement and, thus, union and employer were without power to negotiate those benefits away); UAW v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983) (finding that retirees became vested in certain benefits upon retirement); Hind v. Hutnik, 419 F. Supp. 630 (D.N.J. 1976) (where employer previously entered into a multi-employer pension plan, it may not enter into a new agreement with the union extinguishing the pension fund by eliminating further contributions to it without making provision for the financial protection of retired employees currently receiving pension benefits from the fund, due to vesting of the pensioners' right to lifetime benefits under state law); Hauser v. Farwell, Ozmun, Kirk & Co., 299 F. Supp. 387 (D. Minn. 1969) ("whereas a union may bargain as to prospective matters such as seniority rights, future conditions of employment, etc., it cannot bargain away the accrued or vested rights of its members" without their consent).

While the pension or other retiree rights in many of these federal cases became vested upon retirement, the reasoning therein would be applicable to the vested rights of active employees as well; the key being that the rights in question were vested, not how or to whom they became vested.

⁵⁹ See, e.g., Welter v. City of Milwaukee, 571 N.W.2d 459, 464 (Wis. Ct. App. 1997) *rev. denied*, 217 Wis. 2d 519 (1998) ("The City's argument that the officers should be deemed to have consented to the modification of their vested retirement-system rights because the concessions were agreed to by their unions ignores that a union may not bargain away the vested rights of its members without the express consent of those members."); In re Morris Sch. Dist. Bd. of Educ., 718 A.2d 762 (1998) *cert. denied*, 156 N.J. 407 (1998) (noting that "[i]n a variety of factual settings, courts have held that a union has no authority on behalf of its membership to bargain away various forms of deferred compensation earned during the terms of prior collective bargaining agreements absent knowing consent by those who would be adversely affected").

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

choose to forego certain benefits in future negotiations in favor of more immediate compensation, "it may not... bargain away retiree benefits which have already vested in particular individuals."⁶⁰ Such rights, the court stated, are interminable once vested.⁶¹

7. Reasonable Modification Doctrine: Benefits May Be Modified Before Retirement If Comparable Offsetting Advantages Provided

Any statutory benefit is subject to the implied qualification that the governing body may make modifications and changes to the statute.⁶² The employee does not have an absolute right to any "fixed or definite benefits, but only to a substantial or reasonable pension."⁶³ Thus, "vested contractual pension rights *may be modified prior to retirement* for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system."⁶⁴ Nonetheless, "[such] modifications must be reasonable," and to be sustained as such, a modification must satisfy a two-pronged test: first, any resulting disadvantage to a member must be accompanied by comparable, offsetting advantages; and second, the modification of the member's pension rights "must bear some material relation to the theory of a pension system and its successful operation . . ."⁶⁵ The City has not asked that we consider any specific proposed "comparable advantages" under this "reasonable modification" doctrine.

8. The Scope of the Vested Right Is Limited By the Terms of the Relevant Contract.

As already noted above, the rights of City employees and retirees to retiree health benefits under the terms of the applicable contract most likely became constitutionally "vested" – i.e., protected from impairment – upon their acceptance of employment with the City. This does

⁶⁰ 716 F.2d at 1482 n.8.

⁶¹ *Id.*

⁶² *Kern*, 29 Cal. 2d at 855.

⁶³ *Id.*

⁶⁴ *Int'l Ass'n of Firefighters v. City of San Diego*, 34 Cal. 3d 292, 300-01 (1983) (internal citations omitted). Courts have concluded that retirees, unlike active employees, are not subject to the reasonable modification doctrine. *Terry v. City of Berkeley*, 41 Cal. 2d 698, 702-03 (1953); *Claypool v. Wilson*, 4 Cal. App. 4th 646, 664 (1992).

In addition, under limited circumstances not relevant here, impairment of a contractual obligation may be justified. See *Olson v. Cory*, 27 Cal. 3d 532, 539 (1980) (four factors warranting legislative impairment of vested rights: (1) the enactment serves to protect basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency, and (4) the enactment is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment).

⁶⁵ *Id.*

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

not necessarily mean, however, that the City is without any discretion to make changes. In accordance with the legal considerations discussed below, the City's ability to modify its retiree health program will depend upon the terms of the governing contract.⁶⁶

(a) Documents that Constitute the "Contract"

For a right to vest, it must be created under a valid contract; "the contract clause does not protect expectations based upon legal theories other than contract."⁶⁷ This "contract" between the employer and employee generally consists of the statute, ordinance or other official action of the governing body of the employer that sets forth the terms of the benefit the employer agrees to provide.⁶⁸ Although we have not found any case that squarely addresses the issue, it also appears that the "contract" may include an MOA under which the members are third-party beneficiaries, and that the rights set forth in the MOA may also be constitutionally protected, at least for the duration of the MOA.⁶⁹

⁶⁶ Int'l Ass'n of Firefighters v. City of San Diego, 34 Cal. 3d 292 (1983), 302; Kern, 29 Cal. 2d at 850 (the nature and extent of employer's obligation must be ascertained from the language of the pension provisions and judicial construction of those provisions or similar provisions at the time the contractual relationship was established); Lyon v. Flourney, 271 Cal. App. 2d 774, 783 (1969) ("it is necessary to perceive the terms of the contract and to utilize those terms to measure the claimed impairment"); see also Thorning, 11 Cal. App. 4th at 1607-08 (looking to the terms of the board's declaration of policy to determine whether the vested contractual right included the right to have the employer pay for the cost of coverage). This is consistent with the approach taken by courts determining whether amendments may be made to retiree welfare benefit plans sponsored by private employers under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). See Cinelli v. Sec. Pac. Corp., 61 F.3d 1437, 1441 (9th Cir. 1995) ("[a]n employer may amend or terminate [retiree life insurance] benefits pursuant to the terms of the plan at any time"); Stearns, 297 F.3d at 711-12 (well settled that an unambiguous reservation-of-rights provision is sufficient without more to defeat a claim that retirement welfare benefits are vested); Gable v. Sweetheart Cup Co., 35 F.3d 851, 856 (4th Cir. 1994) (plan document did not contain a promise to vest retiree medical benefits; employer expressly reserved the right to modify or terminate the participant's benefits); Sprague v. Gen. Motors Corp., 133 F.3d 388, 401 (6th Cir. 1998) (en banc) (plaintiffs' retiree medical benefits were not vested; plan stated that the terms of the plan were subject to change); Frahm v. Equitable Life Assurance Soc'y, 137 F.3d 955, 960 (7th Cir. 1998) (written terms of the retiree medical plan are the effective terms).

⁶⁷ Walsh v. Bd. of Admin., 4 Cal. App. 4th 682, 696-97 (1992).

⁶⁸ See, e.g., Int'l Ass'n of Firefighters, 34 Cal. 3d at 302 (looking to city charter and ordinance); Ventura County, 228 Cal. App. 3d at 1598-99 (looking to the Government Code to determine employer's obligations); Orange County, 234 Cal. App. 3d at 843-44 (same); Thorning, 11 Cal. App. 4th at 1607-08 (looking to official declaration of policy issued pursuant to Government Code); 83 Op. Cal. Att'y Gen. 14 (2000) (benefits provided pursuant to city resolution adopted under Government Code).

⁶⁹ Compare California Assoc. of Prof. Scientists ("CAPS") v. Schwarzenegger, 137 Cal. App. 4th 371 (2006); San Bernardino, 67 Cal. App. 4th 1215 (1998); Mayers, 2003 Cal. App. Unpub. LEXIS 6346 (considering as part of the "amorphous" implied-in-fact contract collective bargaining agreements and MOUs).

The CAPS case noted that nine of the vested rights authorities it cited addressed a situation involving collective bargaining agreements, but stated that if a collective bargaining agreement purports to secure rights even for future employees, it may well be that the those future employees have contract clause protection. It found it

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Other than one unpublished case which suggests that informal communications (as well as course of conduct) might constitute part of an amorphous, implied-in-fact contract,⁷⁰ we have not found any California cases in which participants argued or courts held that a *vested right* was created by a statement in an employee communication. Generally, the cases that address employee communications analyze the promises or misstatements under an estoppel theory.⁷¹ This may be explained, in part, by the relatively informal process to which internal employee communications are subject when compared to the official, legislative process involved when a public entity adopts an ordinance, resolution or statute.⁷²

In this case, the "contract" between the City and its employees probably consists of the Municipal Code sections which establish the Federated and P&F Retiree Health Plans and, as discussed in section III.B.1 below, arguably includes at least some of the overarching provisions of the Charter as well. Although the MOAs between the City and the relevant collective bargaining units arguably might be considered part of this "contract," the language of the MOAs contains virtually no substantive terms and merely references the relevant statutory provisions. Additionally, for purposes of this advice letter, discussion of employee communication materials generally will be addressed in the context of a potential claim under promissory estoppel or

(continued...)

unnecessary to decide the issue because the contract at issue did not promise to leave the pension rights of future employees unchanged.

The San Bernardino court was addressing in-service, longevity benefits that were established by MOU and distinguished them from statutorily-based retirement benefits. It concluded that, at least for active employees, benefits set forth exclusively in an MOU of fixed duration cannot "become permanently and irrevocably vested" and may be changed upon expiration of the MOU. The employees in that case had no legitimate expectation that the benefits would continue unless they were renegotiated.

⁷⁰ Mayers, 2003 Cal. App. Unpub. LEXIS 6346. In addition, California courts have found the existence of implied or unilateral contracts on the basis of informal employment documents in cases that did not involve employee benefits. See, e.g., Hepp v. Lockheed-California Co., 86 Cal. App. 3d 714, 719 (1978) (triable issue of fact whether company's rules and policies regulating rehiring of employees laid off for lack of work were intended as a positive inducement for employees to take and continue employment); Scott v. Pacific Gas and Electric Co., 11 Cal. 4th 454, 465 (1995) (discipline guidelines in policy manual created implied contract not to demote employee without good cause).

⁷¹ See Int'l Ass'n of Firefighters, 34 Cal. 3d 292 (analyzing summary plan description under estoppel rather than vested rights analysis); Crumpler v. Bd. of Admin., 32 Cal. App. 3d 567 (1973) (employer estopped from retroactively reclassifying misclassified employees, but such employees had no vested right in an erroneous classification).

⁷² See Int'l Ass'n of Firefighters, 34 Cal. 3d at 306 (Kaus, J., concurring) ("without some substantial showing of actual harm, it would be ludicrous if carefully crafted pension legislation could be effectively amended by a bureaucrat's somewhat inept attempt at summarization"). See also Wallace v. State Personnel Bd., 168 Cal. App. 2d 543, 546-47 (1959) (court refused to give effect to narrow interpretation to the Personnel Transaction Manual of the evidence required to prove the necessity for sick leave under the Government Code; the relevant section of the manual was never adopted as a rule by the Personnel Board and hence can be considered as nothing more than an administrative directive for the guidance of department heads).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

equitable estoppel. They also are referenced briefly in the discussion of the retiree health "contract" where relevant to show extrinsic evidence of the City's intent with regard to the terms of that contract.

(b) Contract Terms and Reasonable Expectations Generally

Whether a proposed change impairs a vested right will depend upon how the member's rights are defined under the terms of the governing contract.⁷³ In other words, the nature and extent of the City's obligation must be ascertained from the language of the governing provisions—i.e., the City Charter and the Municipal Code⁷⁴—and judicial construction of those provisions or similar provisions at the time the contractual relationship was established.⁷⁵ "[I]t is necessary to perceive the terms of the contract and to utilize those terms to measure the claimed impairment."⁷⁶ It is the reasonable expectations of the employee that are protected.⁷⁷

When construing the scope of the governing statutes, the primary task is to ascertain the Legislature's intent.⁷⁸ If the language is clear and unambiguous, there is no need for construction or resort to other evidence of Legislative intent.⁷⁹ On the other hand, if a statute is ambiguous, courts typically will consider evidence of intent beyond the language and examine the history and background of the statute in an attempt to ascertain the most reasonable interpretation.⁸⁰ Moreover, even where the language is clear, courts still may analyze whether the literal meaning of a statute comports with its purpose.⁸¹ "The intent prevails over the letter, and the letter will, if possible, be read as to conform to the spirit of the act."⁸² Examples of cognizable legislative history include different versions of the bill, analysis by legislative party

⁷³ Int'l Ass'n of Firefighters v. City of San Diego, 34 Cal. 3d 292, 302 (1981); Kern, 29 Cal. 2d at 850.

⁷⁴ See, e.g., Int'l Ass'n of Firefighters, 34 Cal. 3d at 302 (looking to city charter and ordinance); Ventura County, 228 Cal. App. 3d 1594 at 1598-99 (looking to the Government Code to determine employer's obligations); Orange County, 234 Cal. App. 3d at 843-44 (same); Thorning, 11 Cal. App. 4th at 1607-08 (looking to official declaration of policy issued pursuant to Government Code); 2000 Cal. AG Lexis 3 (January 28, 2000) (benefits provided pursuant to city resolution adopted under Government Code).

⁷⁵ Kern, 29 Cal. 2d at 850.

⁷⁶ Lyon v. Ftounoy, 271 Cal. App. 2d 774, 783 (1969), appeal dismissed, 396 U.S. 274 (1970).

⁷⁷ Allen v. Bd. of Admin., 34 Cal. 3d at 120; Ass'n of Blue Collar Workers v. Wills, 187 Cal. App. 3d 780 (1986) (right vested was "reasonable expectation" that city would meet its statutory obligation to fund past-service liability).

⁷⁸ Brown v. Kelly, 48 Cal. 3d 711, 724 (1989).

⁷⁹ Lundgren v. Deukmejian, 45 Cal. 3d 727, 735 (1988).

⁸⁰ Watts v. Crawford, 10 Cal. 4th 743, 751 (1995).

⁸¹ Lundgren, 45 Cal. 3d at 735.

⁸² Id.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

caucuses, analysis of the Legislative Analyst, analysis prepared for and by various legislative committees, and the Legislative Counsel's Digest.⁸³ Statements reflecting the subjective opinions of interested parties or individual Legislators which are not shared or made known to the Legislature as a whole are disregarded.⁸⁴

Although any ambiguity or uncertainty in retirement legislation must be resolved in favor of the petitioner, the construction must be consistent with the clear language and purposes of the statute.⁸⁵ This rule of liberal construction is "applied for the purpose of effectuating the obvious legislative intent and should not blindly be followed so as to eradicate the clear language and purpose of the statute and allow eligibility for those for whom it was obviously not intended."⁸⁶

A number of cases in the retiree health context similarly illustrate how carefully the terms of the relevant "contract" must be parsed. Two recent cases involving the Orange Unified School district have similarly concluded that the contract at issue did not guarantee the plaintiff retirees 100% employer-paid coverage. In 1976, the Orange Unified School District's governing board adopted Policy 4244.2, which provided: "The district shall underwrite the cost of the district's Medical Hospital Insurance Program for all employees who retire from the district provided they have been employed in the district for the equivalent of ten (10) years or longer." Based on the facts outlined in both cases it appears that district had the following history with regard to changing health benefits: Between 1977 and 1997, the district offered retirees 100% district-paid coverage under an "ever-changing combination of HMOs, indemnity plans, and PPOs" (although, in 1992, the school district ended eligibility for post-retirement health benefits for new hires). In 1994, the school district stopped fully subsidizing the premiums for coverage of active employees and active classified employees were required to pay part of the premium to enroll in the more expensive PPO plan. Sometime in the late 1990's, the district also began imposing a charge on retirees (a so-called "buy-up") for the PPO plan. The district continued to offer a 100% district-paid HMO option.

⁸³ See, e.g., Dubois v. Workers' Compensation Appeals Board, 5 Cal. 4th 382, 393 (1993) (legislative committee reports); Hogoboom v. Superior Court, 51 Cal. App. 4th 653, 670 (2d App. Dist. 1996) (Legislative Counsel's Digest and committee reports); Regents of the University of California v. Superior Court, 225 Cal. App. 3d 972 (2d App. Dist. 1990) (reviewing committee analysis which included committee staff analyses, summary prepared for a committee hearing, Legislative Analyst's analysis and analysis of the Senate Democratic Caucus); Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal. App. 4th 26 (3rd App. Dist. 2005), rev. denied 2006 Cal LEXIS 5193 (April 26, 2006) (listing documents constituting cognizable and inadmissible legislative history and various citations largely from the Third Appellate District supporting these lists; cognizable legislative history includes, for example, different versions of the bill, reports of the legislative analyst, committee reports and analysis, Legislative Counsel's Digest, party caucus analysis, statements of sponsors communicated to the Legislature as a whole, enrolled bill reports).

⁸⁴ See, e.g., Quintano v. Mercury Casualty Co., 11 Cal. 4th 1049 (1995); Kaufman, 133 Cal. App. 4th at 37.

⁸⁵ Ventura County Deputy Sheriff's Ass'n v. Board of Retirement, 16 Cal. 4th 483, 490 (1997).

⁸⁶ Barrett v. Stanislaus County Employees Retirement Ass'n, 189 Cal. App. 3d 1593, 1608-09 (1987).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

In Sappington, the "buy-up" charge for the PPO option was challenged by a class of retirees who had been administrative employees prior to their retirement. The Sappington court agreed with the trial court that the 1976 board policy did not create a vested right to free PPO coverage. Rather, the court held that all the district promised retirees was to provide a medical insurance program in which they could enroll, and to subsidize their costs for enrolling in one of the plans offered. The court looked to the Webster's dictionary definition of "underwrite" and concluded that the statement in the board policy that the district will "underwrite the cost" of the district's health program for eligible retirees did not constitute a promise to pay the *entire* cost for enrolling in a district health plan. In addition, the reference to the district's "Medical and Hospital Insurance Program" was a "generic" term that failed to specify the type of health benefit plan or level of benefits promised. The court concluded that "the language is so broad it appears to obligate the district only to provide a *program* - there is no requirement that the program include any particular kind of insurance."

Finally, the court dismissed the plaintiff's claim that the District's practice of providing a choice between free HMO or PPO coverage for 20 years, which the plaintiffs accepted, was evidence that the parties had interpreted the District's policy to *require* free PPO coverage. The court noted that this position was unsupported by the language of the policy and that the plaintiffs failed to cite any evidence that they, as a group, had a reasonable expectation that they would always receive free PPO coverage. "Generous benefits that exceed what is promised in a contract are just that: generous. They reflect a magnanimous spirit, not a contractual mandate."⁸⁷ The Court of Appeal did not reach the issue of whether the District was obligated by the board policy to provide at least one fully-paid health plan for retirees, as was implicitly found by the trial court, because it was not at issue on appeal.

In Mayers, an unpublished opinion, the former president of the classified employees' union brought a class action challenging the imposition of premium sharing for the PPO option on retirees and seeking declaratory and injunctive relief. In that case, the trial court and Court of Appeal reviewed a number of documents, including the 1976 board policy, a series of collective bargaining agreements between the District and the classified employees, memoranda of understanding and various letters to individual retirees to determine whether the retirees were entitled to free health care during retirement.

The trial court noted that no single document could be called a contract between the parties, noting that the board policy was a "policy" rather than a contract, and the collective bargaining agreements each had language that only obligated the District to pay retiree health benefits for the duration of the contract, and questioning whether the letters had been written by someone with authority to bind the District. The trial court determined that, pursuant to the terms of this amorphous "contract," the District should be enjoined from treating the classified retirees different from active employees regarding the selection of and participation in the medical plans offered by the District. The effect of the trial court's ruling was that, since the

⁸⁷ Sappington v. Orange Unified School Dist., 119 Cal. App. 4th at 955.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

District was requiring active employees to pay a portion of the premium for PPO coverage, it could also require retirees to pay a portion of the premium for such coverage.

The Court of Appeal affirmed the trial court's conclusion that Orange Unified School District retirees who had been classified employees with the District were only entitled to the same health benefits as provided active classified employees, and that there was no continuing duty for the District to provide these retirees with a free-enrollment PPO plan if the District did not do the same for its active classified employees. The appellate court concluded that school District employees did not have a statutorily based vested right to retirement health benefits. The court cited section 7002.5(a) of the Education Code and the opinions in Ventura County and Orange County which, as discussed below, concluded that section 53205.2 of the Government Code does not mandate the provision of health plans for retirees that are equal to those given to active employees. The Mayer court also characterized the retirees' rights as having emanated from an "implied-in-fact contract based on the long-term conduct of the parties" and concluded that the retirees did not carry their burden of proving that there was no substantial evidence supporting the trial court's interpretation of this "contract." The appellate court agreed with the trial court's conclusion that the statement in the board rules that the District "shall underwrite the cost of the District's Medical and Hospital Insurance Program" for all employees who retire from the District with 10 years or more of service did not obligate the District to underwrite the "entire cost" of the health insurance coverage. Finally, the Mayer court would not be baited into answering the question that was at the heart of the appeal: Whether the District could eliminate all health coverage for retirees if it eliminated the coverage for the active employees.

(c) Reserved Discretion to Make Changes

If, under the terms of the contract, the employer or other entity charged with implementing the benefits program has discretionary authority to alter the benefit, action taken consistent with such reserved discretion is not an action that impairs vested rights.⁸⁸ The fact that retirement benefits are subject to modification under certain enumerated circumstances,

⁸⁸ Int'l Ass'n of Firefighters, 34 Cal. 3d at 302; Walsh, 4 Cal. App. 4th at 700; Pasadena Police Officers' Ass'n v. City of Pasadena, 147 Cal. App. 3d 695 (1983); and see San Bernardino, 67 Cal. App. 4th at 1223-25 (benefits could not have become permanently and irrevocably vested as a matter of contract law, because the benefits were earned on a year-to-year basis under an MOU of limited duration that expired under its own terms; employees had no legitimate expectation that the benefits would continue unless renegotiated); Creighton v. Regents of the Univ. of Cal., 58 Cal. App. 4th 237, 245 (1997), rev. denied, 1998 Cal. LEXIS 51 (one-time offer of special incentives for early retirement, accompanied by an express disclaimer that vested rights were created, is not governed by vested rights doctrine); Ventura County, 228 Cal. App. 3d at 1598-99; Orange County, 234 Cal. App. 3d at 843-44; 80 Op. Cal. Att'y Gen. 119 (1997) (noting that benefits granted pursuant to Government Code sections 53200-53210 might be adjusted upward or downward during a term of office depending on the conditions established by the city council in providing for such benefits).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

however, does not mean that the benefits are not constitutionally "vested" and protected from impairment absent those circumstances.⁸⁹

Only a handful of cases addressing employer discretion, however, deal with express reservations of right to amend benefits. For example, in Legislature v. Eu, the Court struck down an initiative provision which would have terminated the Legislators' Retirement Law (LRL) for certain legislators. The Legislature had reserved its right to limit retirement benefits for legislators through the *legislative* process. But the Court concluded that the reserved right of the Legislature to make changes to the LRL did not mean the rights under the LRL were inchoate and unprotected from impairment by the *initiative* process. In other words, the mere existence of the limited reservation of right did not preclude the benefits from being constitutionally vested absent the exercise of that reserved right.⁹⁰

On the other hand, in Walsh v. Board of Administration, the court looked to the same reservation of right and affirmed judgment against a state senator who challenged the *legislative* repeal of an early retirement provision in the LRL. The court noted that, throughout Walsh's service, the Constitution contained an express reservation of the power of the Legislature to limit the retirement benefits of legislators before their retirement.⁹¹ Specifically, it provided: "The Legislature may, prior to their retirement, limit the retirement benefits payable to members of the Legislature who serve during or after the term commencing in 1967."⁹² The court noted that Walsh's benefits had not been abrogated or eliminated, and concluded that the denial of early retirement benefits was within the Legislature's reserved power to "limit" benefits.⁹³ The court distinguished the Eu case, noting that the Eu decision was based on the fact that the right to limit benefits was reserved to the Legislature, and not to the people through the initiative process.⁹⁴

Some courts have considered employer discretion which, although not expressly stated in the form of a reservation of right to amend, is implicit in the terms of the contract.

First, several cases involving health benefits have concluded that the governing statute did not mandate the provision of benefits, but instead made their availability subject to the discretion of the employer.⁹⁵ In Ventura County Retired Employees' Ass'n v. County of Ventura, the court addressed a claim that Government Code section 53205.2 required the county to

⁸⁹ Legislature v. Eu, 54 Cal. 3d 492, 529 (1991).

⁹⁰ Id.

⁹¹ 4 Cal. App. 4th at 700.

⁹² Id. at 700-01.

⁹³ Id. at 701-02.

⁹⁴ Id. at 704.

⁹⁵ See Ventura County, 228 Cal. App. 3d at 1598-9; Orange County, 234 Cal. App. 3d at 843-44.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

provide health care benefits to retirees that were equal to those provided to active employees. This section provided that the county "shall give preference to such health benefit plans as do not terminate upon retirement of the employees affected, and which provide the same benefits for retired persons as for active personnel at no increase in costs to the retired person" The court concluded that, under this section and sections 53202 and 53202.1, the county's decision to furnish health care benefits to retirees was purely discretionary.⁹⁶ Moreover, the court determined that the county was not obligated to subsidize the premium costs for any retiree health benefits it did offer given that Government Code section 53205 provided that the county "may authorize payment of all, or such portion as it may elect, of the premiums . . . for health and welfare benefits of . . . employees [and] retirees."⁹⁷ In other words, under the Government Code provisions on which they were relying, the retirees did not have a right - contractual or otherwise -- to health benefits and premiums equal to those offered to active employees.

Addressing the same Government Code provisions, and following the analysis of the Ventura County court, the court in Orange County Employees' Ass'n v. County of Orange, noted that the use of the word "preference" in the statute implies the exercise of judgment and stated that if the Legislature had intended the county to select or approve a particular kind of plan, it could have done so.⁹⁸ The court concluded that the statute imposed a mandatory duty to exercise discretion in implementing the provisions of the statute, not a duty to select a cost-equalizing plan.⁹⁹

Similarly, in International Association of Firefighters v. the City of San Diego, the California Supreme Court concluded that, in an actuarially based retirement system, members' contribution rates can be adjusted in accordance with revised actuarial assumptions and factors

⁹⁶ 228 Cal. App. 3d at 1598-99. Government Code section 53202 permits a local agency to contract with one or more admitted insurers or health maintenance organizations, as the local agency determines to be in the best interest of itself, its officers and its employees electing to accept the benefits.

⁹⁷ Id. at 1599.

⁹⁸ Orange County, 234 Cal. App 3d at 842.

⁹⁹ Id. at 843.

At first blush, the Ventura County and Orange County cases appear to be in direct conflict with the Thorning decision because they all involve health benefit plans offered pursuant to the same provisions of the Government Code, but reach different conclusions. The Thorning court, however, looked beyond the authorizing statute to the official policy issued by the employer pursuant to that statute to conclude that the employer had committed to provide retiree health benefits. In contrast, in both Ventura County and Orange County, the court did not address, and there did not appear to be at issue, any "contract" other than the Government Code that governed the permissible conduct of the counties. Rather, the issue was whether the statute itself imposed a duty which could be compelled by mandamus. See 76 Op. Cal. Att'y Gen. 119 (May 5, 1993) (noting that its opinion at 67 Op. Cal. Att'y Gen. 510 involved a discussion of vesting where there is an official declaration of policy and indicating through a "but see" cite that the Ventura County and Orange County cases contained a different analysis); cf. 80 Op. Cal. Att'y Gen. 119 (noting that sections 53200-53210 do not expressly authorize or prohibit decreases in health and welfare benefits).

**CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE**

that are intrinsic to the system, even though the change incidentally shifted the relative contribution rates of employer and employee.¹⁰⁰ In that case, the governing terms of the system as set forth in the City charter and ordinances provided that the normal rates of contribution shall be such as to provide a specified annuity at retirement according to the tables adopted by the Board of Administration. The plan provisions further provided that the Board "shall adopt such mortality, service and other tables and interest as it deems necessary and make such revisions in rates of contribution of members as it deems necessary to provide the benefits for which the rates for normal contributions are required to be calculated." The court concluded that there was no express provision freezing the rate of employee contributions.¹⁰¹ In fact, "[r]ather than being foreign to the City's retirement system, modification of the contribution rates of both employees and City is intrinsic to the ordinances basing those rates on actuarial factors which can be revised."¹⁰² Accordingly, the Court concluded that the revision in contributions was made pursuant to, and not in derogation of, the governing charter and ordinances.¹⁰³ "Change in contribution is implicit in the operation of City's system and is expressly authorized by that system and no vested right is impaired by effecting such change."¹⁰⁴

Alternatively, an employer can expressly forgo its right to change a contribution amount. The court in Teachers' Retirement Board v. Genest concluded that the members of the California State Teachers' Retirement System had a vested enforceable right to state contributions to a supplemental account of 2.5% of creditable compensation required by Assembly Bill 1102.¹⁰⁵ The Department of Finance ("DOF") attempted to argue that it was not required to make the contributions if the system was actuarially sound. The DOF argued that, because the statute required that the State make the contributions "for the purposes of making the supplemental payments under Section 24415," then it did not need to contribute funds unless the system would be unable to make the supplemental payments.¹⁰⁶ In rejecting the DOF's argument, the court noted that former Government Code section 22954 expressly reserved the Legislature's right to reduce state contributions to the supplemental account. However, AB 1102 repealed this section and added a section which expressly stated that it was "the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested

¹⁰⁰ Int'l Ass'n of Firefighters, 34 Cal. 3d at 300, 302-03.

¹⁰¹ 34 Cal. 3d at 303.

¹⁰² Id. at 300.

¹⁰³ Id. at 302.

¹⁰⁴ Id. at 303.

¹⁰⁵ 154 Cal. App. 4th 1012 (2007).

¹⁰⁶ Id. at 1029.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

benefits.”¹⁰⁷ The court noted that the Legislature would not have repealed the language reserving its rights to reduce its contributions if it intended to continue to reserve the right.¹⁰⁸

(d) Full or Substantial Performance

Even where the employer has reserved discretion to make changes to a plan, however, the employer still may be precluded from changing the benefits of employees who have completed performance under the terms of the contract. For example, in Creighton v. Regents of the University of California (the “Regents”),¹⁰⁹ the court considered an early retirement window program that provided for the crediting of additional age and service credit. The Regents originally authorized the program on May 21, 1993 for individuals who elected, during a window between July 1 and October 1, 1993, to retire on November 1, 1993. As originally authorized, it granted an additional 5 years of service credit upon early retirement. On July 16, 1993, however, the Regents revised the program to provide for only 3 years of service credit. The plaintiffs elected to participate after July 16, 1993 and retired on November 1, 2003. Plaintiffs then claimed that reducing the years of service credit granted from 5 to 3 impaired their vested contract rights.

The court first noted that the early retirement benefit was different in kind from the normal pension benefit because it was a one-time, limited offer to induce foreshortened service, not continued service.¹¹⁰ More importantly, the governing document contained an express disclaimer providing that the crediting of additional age and service credit and the payments associated therewith “shall not be a vested or accrued Plan benefit.”¹¹¹ Thus, the court concluded that this was not the type of benefit which vested immediately. Nevertheless, the court concluded that upon an eligible employee’s formal acceptance of the program and subsequent retirement – i.e., upon full performance – the contract terms would vest.¹¹² In this case, the change was permissible because it was made before the contract rights vested.

Some cases outside the context of the constitutionally based “vested rights doctrine” similarly suggest that an employer may not be able to modify benefits to the extent the employee already has satisfied (or “substantially” satisfied) the conditions for receiving those benefits. Although this issue has not been analyzed in the area of retiree health, there are several analogous cases addressing accrued vacations and severance pay. For example, in Kistler v. Redwoods Community College Dist., school administrators whose contracts were expiring were

¹⁰⁷ Id. at 1030.

¹⁰⁸ Id. at 1031.

¹⁰⁹ 58 Cal. App. 4th 237.

¹¹⁰ Id. at 243-44.

¹¹¹ Id. at 244.

¹¹² Id. at 245.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

informed that their administrative contracts would not be renewed, but they would be assigned to faculty positions instead.¹¹³ The plaintiffs had accrued large amounts of vacation pay as administrators, but would not be permitted to use or accrue vacation pay when they were teachers. They were directed to use up their accrued vacation pay by taking time off with pay prior to leaving their administrative positions. The court held that the defendant could not force them to do this. The court stated that this was necessary to "recognize the vested, accrued nature of vacation pay as wages, earned and payable, but receipt of which is delayed."¹¹⁴

In the seminal case of Suastez v. Plastic Dress-Up Co.,¹¹⁵ the California Supreme Court noted that "there is an 'increasingly complex use of compensation in the form of 'fringe benefits,' some types of which inherently are not payable until a time subsequent to the work which earned the benefits . . . '[citation]'. Finding that an employee 'has earned some vacation rights 'as soon as he has performed substantial services for his employer', the court held that the right to a paid vacation, when offered in an employer's policy or contract of employment, constitutes deferred wages for services rendered and a proportionate right to a paid vacation 'vests' as the employee's labor is rendered."¹¹⁶ The court further noted that, "Courts have allowed recovery for vacation despite the fact that contract eligibility requirements were not met, if the employee had *substantially performed*."¹¹⁷

The substantial performance doctrine recently was utilized by a federal court when deciding that an employer could not change the terms of a severance pay plan on the eve of a layoff because the right to severance benefits vests upon the employee's 'substantial performance' of the employment contract, which may occur well before termination."¹¹⁸ The court noted that "employment benefit plans are unilateral contractual offers by the employer which an employee accepts by 'substantially performing' his or her employment."¹¹⁹ Thus, "[w]here an employee has substantially performed, and a unilateral contract for employment

¹¹³ 15 Cal. App. 4th 1326 (1993).

¹¹⁴ *Id.* at 1333.

¹¹⁵ 31 Cal.3d 774, 780 (1982).

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 783 (emphasis added)

In fact, a variation of this "substantial performance" doctrine was relied upon in the development of the modern, constitutionally-based vested rights doctrine that is the main focus of this memorandum. See Kern v. City of Long Beach, 29 Cal.2d 848, 855 (1947) ("It is true that an employee does not earn the right to a full pension until he has completed the proscribed period of service, but he actually has earned some pension rights *as soon as he has performed substantial services* for his employer.") (Emphasis added).

¹¹⁸ In Re Global, Inc., No. 01-039-LPS, 2007 WL 4403146, at *11 (D. Del. December 12, 2007) (applying Wisconsin law).

¹¹⁹ *Id.*

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

no contract rights would be impaired. Given this express reservation of rights, employees could not have a reasonable expectation that the existing retiree health benefits would necessarily remain unmodified (or in existence at all).

At a minimum, however, retirees and Deferred Vested Members (and their survivors) have a strong argument that the reservation of right in the City Charter does not authorize changes affecting them because it does not expressly reference retirees or other former employees. Rather, because the Charter references only "officers or employees," to the extent it has reserved the Council's right to make changes, it has done so only with regard to active employees. As the California Supreme Court indicated in Eu, a reservation of right to amend must be exercised in strict accordance with its terms to be effective. The mere existence of a reserved right to amend does not prevent benefits from being protected from impairment absent the proper exercise of that reserved right. Moreover, they may argue that a reservation of right may not be relied upon to alter their benefits in any event because they have completed their required performance under the terms of the contract and, thus, those benefits have been fully "earned" and cannot be forfeited.

In addition, active employees and retirees alike may argue that the reservations of right in Sections 1500 and 1503 must be harmonized with the other provisions of Article XV. Specifically, the minimum substantive benefit requirements in Sections 1504(a) and 1505(a) and (b) address only traditional pension benefits. Thus, it is reasonable to infer that the voters' intention was to address such traditional pension benefits when adopting all of Article XV. Furthermore, they may allege that this inference is further supported by the fact that a retiree health program was not among the benefits provided by the City when the Charter was adopted in 1965 and, thus, could not have been a variety of benefit contemplated by the voters when they referred to "retirement plans" and "retirement systems."

Moreover, active employees and retirees alike may argue that, because the scope of the reservation of right to amend in the Charter is ambiguous, it is appropriate to look to extrinsic evidence of its meaning. In particular, the City's own application of its Charter shows that Article XV of the Charter – including the reserved right to amend – was intended to apply to only traditional pension benefits like the minimum benefits set forth in Sections 1504 and 1505 and is not part of the "contract" governing the Federated or P&F Retiree Health Plan. Specifically, they may argue that the City itself has never treated its retiree health program as a "retirement plan" subject to Article XV of its Charter. For example, the contribution ratios established for the retiree health program are not consistent with the contribution ratios for current service (i.e., normal cost ratios) required by the Charter. Furthermore, it appears that the P&F Retiree Health Plan is not maintained on an actuarially sound basis consistent with the Charter provisions applicable to police and firefighter retirement plans.

A possible counterargument is that the City generally has treated the Federated and P&F Retiree Health Plans as part and parcel of the overarching "retirement plan" or "retirement system" – i.e., the Federated Plan and the Police and Fire Plan respectively – as evidenced by the

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

fact that the Retiree Health Plans are enacted within the Municipal Code Chapters which govern the respective retirement systems. A description of the Retiree Health Plans also is included in the respective Handbooks describing retirement benefits generally. Moreover, the medical benefits account through which the retiree health benefits are now funded is necessarily part of the qualified retirement plan under applicable tax law.¹³² Finally, in any case under the terms of the applicable retirement system where a person is entitled to a return of employee contributions, such contributions shall include employee contributions to the medical benefits account, with the refund to be paid from the pension assets, not the assets of the medical benefits account.¹³³

In addition, with regard to the City's failure to apply *all* of Article XV to the Retiree Health Plans, it may be argued that the reservation of rights language in Article XV applies to any and all retirement plans -- including Retiree Health Plans -- but that the requirements for contributions and funding apply only to traditional pension benefits. There is no real textual support in the Charter, however, for drawing this distinction given that the reservation of right provisions refer to "retirement plans" and "retirement systems" and the contribution and funding requirements likewise refer to "retirement plans" and "retirement systems." Normally, when the same terms are used multiple times within the same statutory scheme those terms will be interpreted to have a consistent meaning.¹³⁴ Thus, even if a court concluded that the reservation of right to amend in Article XV of the Charter applies, the court might also require the City to be internally consistent and apply the contribution ratio and actuarial funding provisions to Article XV to its retiree medical and dental benefits.

Furthermore, the City has never relied on this reservation of rights to change its retiree health program and, in fact, recently added more limited reservations of right to amend the Retiree Health Plans. Specifically, Sections 3.28.1995, 3.28.2045, 3.36.1950 and 3.36.2050 provide that the City reserves the right to limit medical benefits and alter the cost allocation for dental benefits as necessary to satisfy the requirements of IRC Section 401(h). Employees may argue that the most reasonable inference is that the City has not reserved its right to amend its retiree health benefits for any other reason. Arguably, if the City had the right to limit retiree health benefits under the reservation of right in Article XV of the Charter, there would be no need for a specific provision in the Municipal Code stating that the City has the right to alter medical and dental benefits to satisfy 401(h) requirements. In fact, interpreting the Article XV reservation of right to apply to retiree health benefits would render the Municipal Code provisions extraneous, contrary to accepted principles of statutory construction. Thus, the presence of Sections 3.28.1995, 3.28.2045, 3.36.1950 and 3.36.2050 further supports the conclusion that the Council did not view the Charter as allowing it to amend the retiree health benefits at any time or for any reason.

¹³² IRC § 401(h); §§ 3.28.380.A. and 3.36.575.A.

¹³³ §§ 3.28.380.F. and 3.36.575.F.

¹³⁴ Hassan, 31 Cal. 4th at 716. ("[W]ords should be given the same meaning throughout a code unless the Legislature has indicated otherwise.")

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Finally, members may point to the fact that the City has never communicated this reserved right to amend retiree health benefits to members as evidence that Sections 1500 and 1503 of the Charter do not apply to these benefits.

It may be argued that there is no official written interpretation or policy regarding the scope of Article XV and that the conduct cited does not amount to a long-standing administrative construction of the statute. Absent other evidence of the voters' intent to the contrary, however, a court might conclude that the reasonable inference to be drawn from the City's conduct is that it has not ever viewed Article XV as applying.

It also might be argued that, even assuming the City previously took the position that some provisions of Article XV of the Charter did not apply to retiree health benefits, it may adopt a new interpretation of the Charter. A court might still conclude, however, that the City's changed interpretation is unreasonable in light of other considerations.

In sum, there is a reasonable argument that the City has reserved its right to amend the Federated and P&F Retiree Health Plans in the Charter. Retirees and Deferred Vested Members, however, have a strong argument that the reservation of right to amend *by its own terms* applies only to active employees and not to them. Additionally, City employees may argue that (1) the City has never treated the Federated or P&F Retiree Health Plan as subject to Article XV of the Charter; and (2) the inclusion of a provision in the Municipal Code allowing for specific changes to the Federated Retiree Health Plan ordinances to ensure compliance with Code section 401(h) suggests that the City has not reserved its right to make any other changes. Thus, there is a substantial risk that members could successfully argue that the reserved right to amend in Article XV is inapplicable to the Retiree Health Plans.

In addition, even assuming that the reserved right to amend in Article XV of the Charter does apply to the Retiree Health Plans, members who already have performed enough service to qualify for medical or dental benefits when they retire may argue that their benefits and the conditions for receiving them may not be modified. Specifically, relying on the Creighton, Kistler and Suastez cases discussed above, they reasonably may argue that they have performed all necessary services to earn these benefits – that is, that they have performed or “substantially” performed under the contract – and that their rights may not be modified notwithstanding any reservation of right. If this argument were successful, the reservation of rights clause would effectively preserve the City's right to modify the terms of a benefit only for those who have not done all or “substantially” all they have to do to earn it.

Finally, if a court concluded that the reservation of right to amend in Article XV of the Charter does apply, that court might also require the City to be internally consistent and apply the contribution and funding provisions in Article XV to its retiree medical and dental benefits.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

2. To the Extent the City Has Not Reserved Its Right to Amend Retiree Health Benefits, Some Changes Still May Be Consistent with the Terms of the "Contract."

Even if active employees may successfully argue that their rights to receive benefits under the current Municipal Code provisions are not subject to a general reserved right to make changes, and notwithstanding the fact that retired employees do not appear to be subject to that reserved right in any event, certain of the proposed changes are arguably still within the scope of contractual rights granted by the City. Most of the proposed changes, however, probably would constitute impairment of vested contractual rights absent the City conferring offsetting advantages. You have asked us to consider the following proposed changes: (1) an increase in the number of years of service required for an employee to be eligible to receive retiree health benefits; (2) a change in the level of benefits -- i.e., premium payments -- provided; (3) an increase in the amount of the contributions paid by employees to pre-fund retiree health benefits; and (4) a change in the plan design of the medical or dental insurance programs.

Before discussing each of these features individually, however, it is important to revisit the rule that benefits which are awarded after an employee leaves employment are not constitutionally protected from impairment unless the individual exchanged other contractual rights for the new benefits.¹³⁵ Accordingly, the City should be able to change the eligibility criteria, plan design or benefit level with regard to an employee who was first awarded coverage under the terms of the Plan after leaving City service -- e.g., Deferred Vested Members under the Police and Fire Plan who left employment before 1992, but who first were given eligibility in 2002¹³⁶ or members of either the Police and Fire Plan or the Federated Plan who retired prior to the implementation of retiree health benefits in 1984 who were allowed to enroll-- without impairing a vested contract right.

(a) Years of Service Requirement

As noted above, members are eligible for retiree health benefits only if the member retires for service or disability and, at the time of such retirement is entitled to 15 or more years of service or is otherwise entitled to a retirement allowance equal to 37½% of his final compensation (without regard to any reduction for workers compensation). With the exception of adding eligibility for Deferred Vested Members as discussed above, the service requirements have essentially been the same since the inception of the retiree health program. Thus, each member who accepted employment or continued in employment after the relevant Plan was adopted or became applicable to that individual, if later, likely has a vested right to receive

¹³⁵ See Kern, 29 Cal. 2nd at 856; California League, 87 Cal. App. 3d at 140; Thorning, 11 Cal. App. 4th at 1607; San Bernardo Public Employees' Ass'n, 67 Cal. App. 4th at 1215.

¹³⁶ When coverage for Deferred Vested Members was added to the Federated Retiree Health Plan in 1988, it appears that coverage was added only for those who became Deferred Vested Members after the date of the change, and not retroactively. Accordingly, this analysis is not applicable to the Federated Retiree Health Plan.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

benefits based on the years-of-service eligibility criteria in effect at that time. Even if an employee does not yet have sufficient service credit to qualify for benefits, he or she has a right to continue to earn benefits under these terms. Any change in the years-of-service requirement likely would constitute an impairment of such employee's contract absent the implementation of an offsetting advantage.

A possible counterargument is that, like the State in Miller, the City is merely altering a member's required period of service in a way that affects the maturation of the member's benefit and, thus, is not impairing a vested right. Such an argument, however, is unlikely to persuade a court. In Miller, the plaintiff's right to receive maximum pension benefits was subject to certain conditions and contingencies -- i.e. age and service requirements. Although the reduction in the mandatory retirement age resulted in the plaintiff being unable to satisfy all the conditions for him to receive the maximum benefit, *the conditions themselves -- i.e., the age and service retirement formula provisions -- were not changed to his detriment*. Additionally, the court in Miller focused on the fact that public employees have no contractual right to continued employment. In contrast, if the City were to increase the years of service requirement, it would not simply be altering an employment right, but would be changing the condition -- i.e., the contract term -- itself and, thus, almost certainly would impermissibly infringe on a vested right.

(b) Benefit Level

As noted above, the Plans provide for payment of an amount equivalent to the lowest of the premiums for single or family medical insurance coverage (as applicable) which is available to an employee of the City at the time the premium is paid. Sections 3.28.1980B & 3.36.1930B. Likewise, the Plans provide for payment of 100% of the premiums for dental insurance coverage. Sections 3.28.2030 & 3.36.2030. In this memorandum, these premium benefit levels are referred to collectively as the "100% Premium Benefit." These terms have remained essentially unchanged since inception for the Federated Retiree Health Plan, but first became a term of the P&F Retiree Health Plan in 1998. This change was a benefit enhancement to the P&F Retiree Health Plan and was extended not just to current employees (and retirees covered by the arbitration), but to members who terminated employment prior to 1997. Prior to 1998, the P&F Plan provided that a retired member was required to pay a premium for medical insurance coverage in the same amount as was paid by a current city employee in the classification from which the member retired.

Thus, each member who accepted employment or continued in employment after the applicable plan first provided for this premium payment likely acquired a vested right to receive the 100% Premium Benefit upon satisfaction of the eligibility conditions. Any change in the promised 100% Premium Benefit level likely would be treated by a court as an impairment of such employee's contract.

Retirees and Deferred Vested Members who are members of the P&F Plan and who left the City's service prior to 1998, however, should not have a vested right to the 100% Premium

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Benefit. As discussed above, members do not have a vested right in any increase in benefit level that they enjoy after separating from City service. Thus, these members would have a vested right only in the premium amount under the terms of the Plan in existence when they left employment – i.e., a right to pay only as much as current employees in the job classification from which the member retired. Of course, notwithstanding the vested rights analysis, it appears that the City could not cut the benefit back to this level for people retiring between February 4, 1996 and 1998 without violating the arbitration award.

As noted above, both Retiree Health Plans now reserve the right to change the portion of the premium paid by the Plan if necessary to satisfy the funding restrictions of IRC section 401(h). We are not aware of any facts which suggest that IRC section 401(h) limitations have been reached, and thus it does not appear that this provision has been triggered. In addition, each of these provisions arguably could not be applied to alter the rights of individuals who became members prior to that date that provision was added without impairing their vested contract rights.

(c) Amount of Funding Paid by Employees and by the City

As noted in the Factual Background section of this memorandum, under Sections 3.28.380 and 3.36.575, contribution rates "shall be established by the Board as determined by the Board's actuary . . ." Pursuant to this language, each Board should be free to increase the total contribution rate to be borne by the City and employees if doing so would be consistent with the recommendation of that Board's actuary. In fact, I understand that each Board has done so in the past. As in International Ass'n of Firefighters, such changes are consistent with, rather than in derogation of, the terms of the applicable "contract" and, thus, should not impair employees' vested rights.

Unlike the statutory provisions in International Ass'n of Firefighters, however, the discretion granted under these sections does not appear to permit the Board or Council to adjust the ratio of City contributions and member contributions. Rather Sections 3.28.380 and 3.36.575 provide that the total contributions shall be borne by the City and employees in specified ratios: eight-to-three for dental benefits and one-to-one for medical benefits. Thus, given these fixed ratios, as in the Allen case, employees would almost certainly be successful in arguing that their rights to contribute under these ratios are vested and cannot be changed. Although these ratios were not codified until 2001 (for the P&F Retiree Health Plan) and 2006 (for the Federated Retiree Health Plan), current employees' vested contract rights include not only the provisions of the "contract" in effect when they became employed, but additional benefits conferred during employment. Moreover, as noted in the Factual Background section, even before codification, these ratios are reflected in materials dating back to the original adoption of the Federated and P&F Retiree Health Plans. Thus, a court likely would treat the employees' rights to contribute under the ratios currently set forth in the Plan as vested, and any action by the City to alter this ratio as an impairment of its contractual obligations.

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

It might be argued that the ratio provisions govern only contributions to fund current service (i.e., the so-called normal cost), and that any unfunded liability could be shifted to employees without violating these provisions. Unlike the Charter, however, which states that the specified contribution ratios relate to current service, Sections 3.38.380 and 3.36.575 do not limit the ratios to current service contributions. Thus, employees could reasonably take the position that any past service liabilities could not be funded using less favorable ratios.

(d) Plan Design Change for Benchmark and Other Options

As indicated above, the Federated Retiree Health Plan provides for a payment equal to the lowest cost premium for a medical insurance plan (single or family as applicable) *"which is available to an employee of the city at such time as said premium is due and owing."* Section 3.28.1980. It further provides that payment will only be made for an "eligible medical plan" or an "eligible dental plan" which are defined to mean a medical or dental plan respectively with which the City has contracted *"as part of the city's benefits to city employees."* Sections 3.28.1980, 3.28.1990 (emphasis added).

The P&F Retiree Health Plan likewise provides payment only for the lowest-price "eligible medical plan" and "eligible dental plan" which are defined to mean a medical or dental plan respectively with which the City has contracted *"as part of the city's benefits to city employees."* §§ 3.36.1940 and 3.36.2040.

Thus, the terms of the plan do not specify a health insurance plan design that must be provided, but simply state that the health insurance plan(s) available to retirees will be ones that are contracted for by the City as part of its employee benefits program. In other words, the City should be able to alter the design of the benchmark plan and other health insurance plans that it offers to its employees and retirees – for example, by changing covered services, co-payments or deductibles – consistent with the terms of the governing "contract" and, thus, without impairing vested rights.

In addition, the City arguably may make design changes to its retiree health plans without making similar changes to plans provided to active employees. In support of this position, it may be argued that the requirement that the plans be "part of the city's benefits to employees" simply means that, in order for the Plan to pay the retiree health premium, the plan in which the member enrolls must be among those contracted for by the City in connection with its employee benefits program. Arguably, such language does not mean that the retiree health plan(s) for which the City contracts must be identical to the plans offered to active employees.

Members, however, may make a reasonable argument that the requirement that a retiree health plan be "part of the city's benefits to city employees" means that the retiree health plans offered will be the same as those offered to active employees. In fact, this position is consistent with representations made in the Police & Fire Department Retirement Plan Handbook to Deferred Vested Members. Handbook page 83. Members covered by the Federated Retiree

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Health Plan in particular may argue that section 3.28.1980 specifically requires the City to offer a benchmark plan "*which is available to an employee of the city.*" In other words, they may argue that the City cannot create a low-cost alternative that applies only to retirees for the purposes of setting the benchmark. Thus, members may successfully argue that the City cannot make design changes to the benchmark medical plan (or other retiree insurance plans) without making equivalent changes to plans offered to active employees.

C. The Doctrine of Estoppel

1. Applicable Legal Principles

A government body in California may be bound under the doctrine of equitable estoppel where justice and right require it, if being bound is not otherwise harmful to some specific public interest or policy, or an expansion of the authority of a public official.¹³⁷ The following elements would have to be established for equitable estoppel against the City: (i) the City must be apprised of the facts; (ii) the City must intend that its conduct be acted upon, or must act in a way that the participants had a right to believe it was so intended; (iii) the participants must be ignorant of the true state of facts; and (iv) they must rely upon the City's conduct to their injury.¹³⁸ Good faith conduct of public officers or employees does not excuse inaccurate information given negligently.¹³⁹

Related to equitable estoppel is promissory estoppel, defined as follows: "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."¹⁴⁰ Unlike equitable estoppel, the representation is promissory, not a misstatement of an existing fact.¹⁴¹

¹³⁷ Crumpler, 32 Cal. App. 3d at 580; Fleice v. Chualar Union Elem. Sch. Dist., 206 Cal. App. 3d 886, 893 (1988) (finding no room to apply the estoppel doctrine where teacher had been erroneously classified as tenured but was later reclassified and her employment not renewed, because estoppel would have the court ordering a public agency to do what it had no statutory power to do).

¹³⁸ Crumpler, 32 Cal. App. 3d at 581.

¹³⁹ Id. at 582.

¹⁴⁰ See Firebank Co. v. White, 152 Cal. App. 2d 522, 525 (1957) (citing Restatement of Contracts, § 90).

¹⁴¹ A related, alternative claim might be one for fiduciary breach based upon an affirmative misrepresentation or failure to disclose. See Hittle v. Santa Barbara County Employees' Retirement Ass'n, 39 Cal. 3d 374, 393-94 (1985) (pension plan trustees have a fiduciary obligation to inform members fully and fairly of the plan and its various options and features); and see, e.g., In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation, 2006 U.S. Dist. Lexis 72026 (granting injunctive relief based on conclusion that plaintiff's detrimentally relied upon affirmative misrepresentations or inadequate disclosure notwithstanding the fact that the SPD contained an express reservation of right to amend), on remand from 242 F.3d 497 (3rd Cir. 2001) ("A judgment remains to be

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Although estoppel generally is based upon affirmative conduct, silence in the face of a duty to speak may support an estoppel in some circumstances.¹⁴²

An estoppel binds not only the immediate parties to a transaction but those in privity with them.¹⁴³ "Privity is generally defined as the relationship in which a person is so identified in interest with another that he is said to represent the same legal right; its discernment resting upon a case-by-case examination."¹⁴⁴ Consistent with this concept of privity, if the representation or conduct relied upon was committed by a party other than the government entity to be estopped, the proof necessary for estoppel generally includes proof of an agency relationship between the government entity to be estopped and the person or entity that made the promise or act on which the estoppel is based.¹⁴⁵

In International Ass'n of Firefighters, the California Supreme Court declined to estop the city from increasing safety members' rates of contribution for the retirement fund, because it found no misrepresentation in the retirement handbook issued to the safety members.¹⁴⁶ While the handbook assured safety members that their rates of contribution would not change with their age as they grow older, the court concluded "this is not to say...that all rates could not be adjusted at some future time to reflect either changes in benefit provisions of the system or increased earnings of the...Fund."¹⁴⁷ The court held that this statement would not reasonably induce a safety member to believe that these were the only factors that could affect his or her rates, but were instead merely examples. Justice Kaus, concurring, determined that as there was no showing of any employee accepting employment or remaining on the job in reliance on the statement, the requisite element of harm was missing.¹⁴⁸

(continued...)

made as to whether a reasonable fiduciary in Unisys' position would have foreseen that its conduct towards the various plaintiffs would result in important decision making on their part based upon a mistaken belief that they possessed guaranteed lifetime benefits.").

¹⁴² Moore v. State Board of Control, 112 Cal. App. 4th 371, 384 (2003); Lix v. Edwards, 82 Cal. App. 3d at 580 (trustees had a fiduciary obligation to provide notice of result of break in employer contributions).

¹⁴³ Cumpler, 32 Cal. App. 3d at 582.

¹⁴⁴ Id. at 583.

¹⁴⁵ Moore, 112 Cal. App. 4th at 385.

¹⁴⁶ 34 Cal. 3d 292.

¹⁴⁷ Id. at 304-05.

¹⁴⁸ Id. at 306. As for the relation between the plan document and the handbook, Justice Kaus stated "without some substantial showing of actual harm, it would be ludicrous if carefully-crafted pension legislation could be effectively amended by a bureaucrat's somewhat inept attempt at summarization."

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

The information presented to public employees in California must be read as a whole for estoppel to apply.¹⁴⁹ In Lee v. Board of Administration, retirement pamphlets distributed to members of the California Public Employee Retirement System ("CalPERS") indicated to members that each member possessed the power to effectively designate any person he or she desired as a beneficiary. The court determined that the pamphlets, though far from complete, made clear that the information provided therein was general and simplified, and "[did] not purport to be the definitive statement of the retirement law," and thus held that estoppel would not lie where the retirement pamphlets contained such express caveats.¹⁵⁰

In cases brought under ERISA, courts generally look to the written statements and representations made to former employees *in effect at the time that they retired* to determine what retiree health benefits were promised to retirees and *whether the employer adequately reserved the right to modify or terminate the retiree health plan*. Statements that the employer may change or terminate the plan are referred to herein as "reservation of rights." For example, in Sprague v. General Motors Corp.,¹⁵¹ the employee communications described the retiree health plan as a "lifetime" benefit that would be "provided at GM's expense." However, the employee communications also put plan participants on notice of GM's right to change or terminate the health care plan at any time. The court, relying on these unambiguous "reservation of rights" in the employee communication materials or the plan, concluded that retirees had no vested right under ERISA to fully subsidized retiree health benefits and no valid claim under the principles of estoppel.¹⁵²

In the ERISA context, ambiguity in the summary plan description ("SPD") must be resolved in favor of the employee and made binding against the drafter.¹⁵³ Although the beneficiary's view of the SPD is important, the correct interpretation must focus on the entire SPD or it will "represent an unrealistically narrow view of how a reasonably prudent employee would read and review this important document."¹⁵⁴ But if the employer publishes an inaccurate SPD and an employee *relies on that plan description to his or her detriment*, the employer will be bound by that inaccuracy.¹⁵⁵

¹⁴⁹ Lee v. Bd. of Admin., 130 Cal. App. 3d 122, 134 (1982).

¹⁵⁰ Id. at 134-35; but see Hittle, 39 Cal. 3d at 393-94 (pension plan trustees have a fiduciary obligation to inform members fully and fairly of the plan and its various options and features).

¹⁵¹ 133 F.3d 388 (6th Cir. 1998).

¹⁵² Id. at 403-04; see also Stearns v. NCR Corp., 297 F.3d at 711-12 (well settled that an unambiguous reservation-of-rights provision is sufficient without more to defeat a claim that retirement welfare benefits are vested).

¹⁵³ Wise v. El Paso Natural Gas Co., 986 F.2d 929, 939 (5th Cir. 1993) (ERISA welfare plan).

¹⁵⁴ Id.

¹⁵⁵ Grosz-Salomon v. Paul Revere Life Ins. Co., 237 F.3d 1154, 1162 (9th Cir. 2001).

CONFIDENTIAL PROTECTED BY
ATTORNEY-CLIENT PRIVILEGE

Assuming that employees or retirees could demonstrate a promise or misrepresentation concerning the duration and immutability of their benefits, the case law suggests that they also would have to prove their reliance on the promise or representation. It is not clear, however, what showing of reliance will be required—that the employees or retirees continued to work based on the descriptions of benefits,¹⁵⁷ that they didn't go to work for someone else who did have this benefit, that they retired based on the promise, that they retired earlier than they otherwise might have, that they did not get another job after retirement, or they changed their position in some other way.¹⁵⁸ Reliance will be a factual question to be resolved at the trial court level.¹⁵⁹

¹⁵⁷ See Baillargeon v. Dept. of Water and Power, 69 Cal. App. 3d 670, 676-79 (1977) (holding that the plaintiff had adequately stated a claim for estoppel with regard to certain supplemental disability benefits where she alleged that she relied on certain statements concerning those benefits "in continuing her employment and in not accepting other employment.").

Where the employee's continued service is correctly viewed as bargained for consideration, however, the action is one for breach of contract (express or implied) and there is no need to resort to the doctrine of estoppel. See Youngman v. Nev. Irrigation Dist., 70 Cal. 2d 240, 250 (1969).

Under analogous circumstances, several California courts have held that a unilateral contract is or may be created when an employee continues in employment after the employer promises a benefit or working condition. See Hunter v. Sparling, 87 Cal. App. 2d 711 (1948) (continued employment was consideration for offer of pension); Newberger v. Rifkind, 28 Cal. App. 3d 1070 (1972). (remaining in employment constituted acceptance and consideration for stock option); China v. China National Aviation Corp., 138 Cal. App. 2d 98 (1955) (employer's "regulation" providing for severance pay was an offer of a unilateral contract that was accepted when the employee, who had previously notified the employer of his intention to quit, remained in his job because of the offer); Hepp v. Lockheed-California Co., 86 Cal. App. 3d 714, 719 (1978) (issue of fact whether employee provided consideration by continuing in employment in reliance on defendant's "policy" of recalling employees who had been laid off). However, in Hunter v. Sparling, the court also found that the employer's offer of a pension was enforceable on promissory estoppel grounds, because the employee had turned down other offers of employment in order not to lose his pension; the court stated that "under such circumstances" the doctrine of promissory estoppel is applicable, suggesting that something more than merely continuing in employment may be necessary for the promise to be enforceable under the doctrine. 87 Cal. App. at 725.

¹⁵⁸ See, e.g., In re Unisys, 2006 U.S. Dist. Lexis 72026, conclusion of law 37-55 (detrimental reliance was established by evidence that employees would not otherwise have retired at that time, and could have been established by proving that other employment or benefit opportunities were declined or that other important financial decisions were made).

¹⁵⁹ Walsh v. Bd. Of Admin., 4 Cal. App. 4th 682, 708 (1992).

EXHIBIT 5

FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM



RETIREMENT HANDBOOK

CITY OF SAN JOSE

SEPTEMBER, 1990



CONTENTS

WELCOME	1
DEFINITIONS	3
MEMBERSHIP	7
CONTRIBUTIONS	13
VESTING	19
SERVICE RETIREMENT	21
COMPUTATION OF SERVICE RETIREMENT ALLOWANCE	23
DISABILITY RETIREMENT	25
COMPUTATION OF DISABILITY RETIREMENT ALLOWANCE	31
RETURNING TO WORK AFTER RETIREMENT	35
MEDICAL AND DENTAL BENEFITS	43
COST-OF-LIVING ADJUSTMENTS	47
SURVIVORSHIP AND BENEFICIARIES	51
INTERNAL REVENUE SERVICE LIMITS	59
SYSTEM MANAGEMENT	61

Welcome

WELCOME



Welcome to the Federated City Employees' Retirement System! The current system became effective on July 1, 1975, and it covers all full-time, and some qualified part-time, federated employees of the City of San Jose. (A separate retirement plan exists for public safety officers.) The Federated Retirement System provides you with benefits when you retire and may provide benefits to your survivors after your death.

Depending on your status and the length of your employment with the City, you may be entitled to some or all of the following retirement benefits:

- Regular monthly payments for the rest of your life.
- Regular monthly payments for your surviving spouse.
- Regular monthly payments to your surviving children if you have no spouse.
- Regular monthly payments for life if you become totally disabled.
- Lump sum payment to your survivors.
- Medical benefits.
- Dental benefits.
- Return of your contributions if you leave City employment without retiring or die before you are vested.

Your retirement benefits are subject to the meet and confer process under the Meyers-Millias-Brown Act, which requires employers to meet with employees to confer about changes in wages, hours, or terms and conditions of employment. Changes in retirement benefits occur frequently, and are discussed during negotiations between City representatives and representatives of the recognized employee bargaining organizations (unions).

Complete details of your retirement system can be found in Chapters 3.28, 3.40, 3.43, and 3.44 of the San Jose Municipal Code. This handbook is a summary of those chapters of the Code. Code references are made at the end of appropriate passages. **If there is any discrepancy or confusion between the information in this handbook and the information in the Code, the Code will prevail.**

Welcome

In the next chapter you will find a list of terms and definitions used in this handbook. If you do not understand a term in the handbook and it is not on the definitions list, contact the Retirement Staff for further clarification.

The Retirement Staff is located at:

City Hall
Employee Services Office
801 North First Street, Room 216
San Jose, California 95110
(408) 277-5137

Please consult with the Retirement Staff if you have any questions regarding your retirement benefits. We are here to help!

SOCIAL SECURITY

City employees are not members of the Social Security system and do not receive Social Security benefits for their City service.

However, you may be eligible for Social Security benefits if you were previously employed by some other institution or company that did contribute to Social Security. Contact your local Social Security office to find out whether or not you are eligible for benefits.

DEFINITIONS

ACCUMULATED CONTRIBUTIONS

Your own contributions to the system for both current and prior service, plus interest. Does not include contributions the City makes to the system on your behalf.



ACTUARIAL EQUIVALENT

A benefit of equal value when computed based on the mortality tables and regular interest rate adopted by the Retirement Board.

BENEFIT

Any retirement or survivorship allowance, refund of accumulated contributions, or money to which you or your beneficiaries or estate become entitled under this system.

COMPENSATION

Your base salary including all paid leaves (for example, sick leave, paid holidays, paid vacation leave, and paid compensatory time). This does not include overtime or lump sum compensatory time payoffs.

COMPENSATION EARNABLE

The base monthly or biweekly pay at your step.

COMPENSATION EARNED

The base monthly or biweekly pay you actually earn.

CURRENT SERVICE

Your City service since July 1, 1975.

DEFERRED VESTED

You are considered to be deferred vested if you meet all of the following qualifications:

- You no longer work for the City; and
- You were vested in the retirement system when you left City employment; and
- You left your contributions in the City's retirement system.

Definitions

DISABILITY

The complete and permanent physical or mental incapacity to satisfactorily perform your duties due to illness or injury. Must be confirmed by medical evaluation.

FEDERATED CITY SERVICE

Period of time for which retirement system members worked for the City and were enrolled in the Retirement System. Includes Prior Service (before July 1, 1975) and Current Service (since July 1, 1975). Also includes the following service rendered after July 1, 1975:

- Eligible military service by system members.
- Absence from work with full compensation (paid disability leave, paid sick leave, paid holidays, paid vacation time, paid compensatory time).

Also may include eligible service under the City's police and fire department plan. (SJMC 3.28.610)

See Part 5 of Chapter 3.28 of the San Jose Municipal Code for complete details.

FEDERATED POSITION

A job that is normally covered by the retirement system, if the person holding that job is a permanent, probationary or provisional employee of the City.

FINAL COMPENSATION OR HIGHEST AVERAGE SALARY

Your highest average annual pay earnable during any 36 consecutive months of City employment.

FISCAL YEAR

The City operates on a fiscal year beginning July 1 and ending the following June 30.

MEMBER

A person who joins this retirement system. Appointment to a full-time position in the service of the City of San Jose confers membership in this system as of the date of appointment.

MORTALITY TABLE

A table detailing the expected life span and expected number of annual deaths of retirement system members. The table is developed by the system's actuary.

Definitions

NON-SERVICE-CONNECTED DISABILITY

A permanent, physical or mental incapacity to satisfactorily perform the duties or functions of your position that did **not** result from a work-related disease or injury.

PRIOR SERVICE

Your City service prior to July 1, 1975.

REGULAR INTEREST

Interest at the rate established by the Retirement Board, compounded annually.

RETIREMENT ALLOWANCE

Monthly payment you receive after you retire. Could also be called a pension. See the section titled "Your Retirement Allowance" for information on how to calculate your allowance.

RETIREMENT BOARD

The trustees responsible for managing the Retirement Fund. The Board consists of five members: a member of the Civil Service Commission, a member of the City Council, a bank, trust, or savings and loan officer in the City of San Jose, and two representatives elected by the City employees.

SAN JOSE MUNICIPAL CODE

The body of laws governing the City of San Jose.

SERVICE-CONNECTED DISABILITY

A permanent, physical or mental incapacity to satisfactorily perform the duties or functions of your position resulting from a work-related disease or injury.

Definitions

SERVICE CREDIT

Number of years you were a member of the retirement system, calculated to two (2) decimal places, used to determine your retirement allowance.

You may receive up to 1,739 hours of credit per calendar year. 1,739 or more hours of service in one calendar year = one year of service credit.

Any fraction of a year in which you work less than 1,739 hours is calculated by dividing the actual hours you worked by 1,739.

If you worked 10 years and 2 months (4 pay periods), your service credit would be calculated as follows:

10 years =	10.00 years of service credit
4 pay periods = 320 hours	
320 hours + 1739 hours =	<u>0.18</u> years of service credit
Total Service Credit:	10.18

(SJMC 3.28.680)

SURVIVING CHILDREN

Your natural or legally adopted unmarried children age 17 and under, or age 18 until their 22nd birthday if they are full-time students.

SURVIVING SPOUSE

The person to whom you are married both at the time of your retirement and at the time of your death.

VESTING

Becoming eligible for retirement benefits. You are vested after five (5) years of City service. See the chapter titled "Vesting" for more information.

(SJMC 3.28.030)

MEMBERSHIP



GENERAL QUALIFICATIONS

As soon as you become a full-time City employee, you are automatically a member of the retirement system. You must complete an enrollment form for membership in the retirement system. You will list the names, birth dates, and social security numbers of your spouse and child(ren) on the form. You must also complete a beneficiary designation form.

CHANGE OF NAME/ADDRESS

You must fill out a "Request for Change of Name and/or Address" (Form 190-22) whenever you or your dependents change names or addresses. Submit the form to the Transactions Division of the Human Resources Department (Room 215) if you are an active employee, or to the Retirement Staff if you are a retiree. This insures that notices and annual statements pertaining to your retirement account reach you.

CHANGE OF STATUS

If any change takes place in your personal life (marriage, divorce, adoption, birth or death in the family), be sure to obtain and fill out a "Change of Enrollment Status" form from the Retirement Staff. If necessary, you should also update your beneficiary designations at this time.

CHANGE OF BENEFICIARIES

Be sure to review your beneficiary designation whenever there is a significant change in your personal life (for example, marriage, divorce, birth or death in the family). You may change your beneficiary designation at any time.

Membership

DIVORCE

The courts have recognized that retirement funds may constitute a major portion of the estate accumulated by City employees. If a court order and/or property settlement related to your divorce involves your retirement contributions, you must provide a copy of the pertinent order(s) to the City's Retirement Secretary prior to filing for retirement.

Payments to a divorced spouse will be made in accordance with the court order governing your marital settlement to the extent permitted by the San Jose Municipal Code.

SPECIAL MEMBERSHIP QUALIFICATIONS

Recipients of Other Pensions or Retirement Allowances

If you are receiving a pension or retirement allowance from any employer other than the City for work you did during a time when you were **not** employed by the City, you are still eligible to be a member of this retirement system. (SJMC 3.28.550B)

Part-time Employees

Part-time employees are eligible to join the retirement system **only under the following conditions:**

- If you were originally hired as a full-time employee and became a member of the system, and later become a part-time employee **without a break in service**. (SJMC 3.28.560)
- If you were a member of the Chapter 3.24 retirement system, you automatically became a member of this system on the day it took effect, July 1, 1975. (SJMC 3.28.400)
- If you were **not** a member of the Chapter 3.24 retirement system, but you took advantage of the one-time option of becoming a member of this retirement system by filing a written statement with the Retirement Board by August 31, 1975 electing to do so.

Membership

Former 3.24 Members

As a Chapter 3.24 member, you could have become a member of this, the Chapter 3.28 system, in a number of ways:

- If you were a City employee and a member of the old Chapter 3.24 retirement system on June 30, 1975, and were still employed in your same position on July 1, 1975, you automatically became a member of this Chapter 3.28 system on July 1, 1975, unless you chose at that time to receive the benefits payable under Chapter 3.24 instead of the benefits payable under the new Chapter 3.28 system. (SJMC 3.28.1150)
- If you retired under Chapter 3.24, and were reinstated into City service after July 1, 1975, your 3.24 retirement allowance and benefits were canceled and you became a member of this system. (SJMC 3.28.410, 420)
- If you left City service, were vested in the 3.24 system, chose to retain membership in the 3.24 system after June 30, 1975, and then reentered City service, you became a member of the 3.28 system, and your membership in the 3.24 system was automatically terminated. (SJMC 3.28.430)

Once you became a member of this system, all of your rights under the 3.24 system were terminated, and you were provided with the rights and benefits of this 3.28 system. (SJMC 3.28.400)

Membership

Deferred Vested Members

If you leave City service permanently without retiring, you will become a "deferred vested" member of the retirement system if:

- You have a minimum of five years of service credit after June 30, 1975; and
- You elect to remain a system member by filing with the Retirement Board within 90 days of receiving notice of your right to remain a member; and
- You leave your accumulated contributions in the retirement fund.

(SJMC 3.28.590)

However, if you receive a disability retirement and your disability subsequently ends but you refuse to come back to work for the City after being offered employment, and you are under age 55, you are not eligible for deferred vested status. The Board may terminate your membership in the system and cancel all your rights to membership benefits. (SJMC 3.28.1390)

Membership

INELIGIBLE EMPLOYEES

The following classes of employees are **not** qualified for membership in the retirement system:

- Mayor;
- City Council members;
- Elected or appointed members of any City board or commission;
- Actively employed, current members of any other retirement or pension system supported by any federal, state or local government or government agency;
- Persons employed to perform services required because of an emergency;
- Persons employed in relief or anti-poverty programs;
- Police and firefighter recruits;
- Temporary employees;
- Contract employees;
- Volunteer workers;
- Emergency appointees in time of war or national emergency;
- Part-time employees hired on or after July 1, 1975.

(S)MC 3.28.460 - 560, 3.28.620)

Membership

(Page intentionally left blank)

CONTRIBUTIONS



Both you and the City make contributions to the retirement system. The Retirement Board determines the rates of contribution. Contribution rates are changed from time to time, but these changes are not retroactive.

Contribution Ratio

The contribution ratio is the ratio between the portion of total contributions the City pays and the portion of contributions you pay. Each retirement system benefit has its own contribution ratio.

For example, the contribution ratio for current service costs is eight to three: for every \$8 paid by the City, you pay \$3. The ratio for retiree medical costs is one to one: for every \$1 paid by the City, you pay \$1.

Contribution Rates

The contribution rates are the percentages of your salary that you and the City each pay into the retirement system. The rates are determined by the Retirement Board. Their determination is based on actuarial studies of the retirement fund's projected benefit costs and expected fund earnings. Contributions are made through payroll deductions.

The Board establishes rates that ensure that the retirement system is able to fund its accrued obligations to all members. Contribution rates are changed after periodic actuarial reviews.

(S)MC 3.28.700-720, 3.28.860)

Contributions

TAX TREATMENT OF CONTRIBUTIONS

Some or all of your contributions to the retirement system may be exempt from federal or state income taxes in accordance with Internal Revenue Code Section 414(h)(2) and California Revenue and Taxation Code Section 17501.

The City adopted IRC Section 414(h)(2) in April, 1987. This made it possible for your contributions to the retirement system to be paid with pre-tax dollars, reducing your taxable income. Prior to April 1987, your contributions were paid into the system with after-tax dollars.

Because they were made with after-tax dollars, contributions made to the retirement system before April 1987 will not be subject to additional taxation when they are withdrawn. The accrued interest on all contributions is taxable. If you draw a retirement allowance, the contributions you made prior to April 1987 are prorated over your life expectancy.

(S)MC 3.28.765)

CONTRIBUTIONS DURING MILITARY SERVICE

If you take a leave of absence without pay in order to serve in the military during a time of war, or if you are drafted in peacetime, the City will continue to make its contributions into the retirement system on your behalf. You must return to City employment within six (6) months of the end of your military service to receive this benefit. You may **not** withdraw any of the City's contributions at any time.

(S)MC 3.28.630)

Contributions

CONTRIBUTIONS AFTER TRANSFER

If you transfer from the San Jose Police and Fire Department Retirement Plan to this system (the Federated City Employees' Retirement System) without a break in service, you may be entitled to credit in this system for the time you served in the Police or Fire Department. Contact the Retirement Staff regarding the process for transferring your accumulated contributions and interest.

(SJMC 3.28.650)

CONTRIBUTIONS REMAINING ON DEPOSIT

Once you are vested, you may leave your accumulated contributions on deposit in the retirement system, even if you leave City employment. They will continue to earn interest until they are withdrawn or you begin to draw a retirement allowance.

CONTRIBUTION CREDIT TO INDIVIDUAL ACCOUNTS

Although all contributions to the retirement system are kept together in the retirement fund, a record will be kept of your contributions, and your contributions will be credited to your individual "account." This account will show any withdrawals or redeposits you make from or to the system. The amount credited to your account, plus interest earned on that amount, totals your accumulated contributions to the system. (SJMC 3.28.770)

You will receive an annual notice documenting your years of service, your contributions to the system, and the interest earned on your contributions.

Contributions

WITHDRAWAL OF CONTRIBUTIONS

You may not withdraw your contributions from the retirement system unless you terminate your membership in the system by leaving City employment. If you do terminate your membership before you are vested, or you are vested and request a return of contributions, you will receive your withdrawn contributions within six months of that termination. (SJMC 3.28.780)

You will not, however, receive any of the contributions the City has made on your behalf. City contributions are not allocated to individual accounts prior to retirement. They cannot be withdrawn by a member upon leaving City employment or terminating membership in the retirement system.

Once you have withdrawn your contributions, all of your rights in the system are terminated and:

- You will not receive any retirement system benefits.
- You will not receive a retirement allowance.
- Your beneficiaries will receive no benefits.

Withdrawal Process

To withdraw your contributions you must:

- Terminate your employment; and
- Terminate your membership in the retirement system.
 - If you are not vested at termination, your membership in the retirement system will automatically be terminated. Your accumulated contributions and the interest credited to your contributions will be returned to you.
 - If you are vested at termination, you may withdraw your contributions and the interest credited to them at any time, voluntarily terminating your membership in the retirement system.

Contributions

REDEPOSIT OF WITHDRAWN CONTRIBUTIONS

If you leave City employment, withdrawing your contributions when you leave, and subsequently return to City employment, you may redeposit your withdrawn contributions into the retirement system. Be sure to notify the Retirement Staff of your return to City employment.

When you return to work for the City, you will receive a written notice explaining this redeposit benefit. If you have noted on your employment application that you are a "rehire," you will receive written notification of this benefit during orientation.

You must file a written notice of your decision to redeposit these funds with the Secretary of the Retirement Board within 30 days of the date of the Retirement Board's written notice.

If you do not file the written notice within the 30-day limit:

- You will **not** be able to redeposit these funds into the system; and
- You will **not** receive service credit for your prior employment with the City.

To receive service credit for your prior employment, you must redeposit all of the following amounts into the retirement system when you return to City service:

- All of the accumulated contributions and interest that you withdrew; plus
- All of the interest your contributions and interest would have earned if they had not been withdrawn, from the day you withdrew your contributions to the day you re-enroll as a retirement system member, the interest amount being based on the actual rate earned by the retirement fund while your funds were withdrawn; plus
- Interest on the total of the previous two items from the date you again become a member of the system until the date that total is redeposited into the retirement fund.

Contributions

If you do decide to redeposit these funds, you may pay them back using any of the following methods:

- In one lump sum within 60 days of filing your request with the Secretary of the Retirement Board to redeposit your funds; or
- In 78 biweekly equal installments, which will be deducted from your paycheck; or
- In a partial lump sum within 30 days of filing your request with the Secretary of the Retirement Board to redeposit your funds, the balance being paid in 78 biweekly installments that are deducted from your paycheck.

(SJMC 3.28.790)

VESTING



To be "vested" literally means to be entitled to a future benefit. You become vested in the retirement system after five (5) years of membership.

After you are vested:

- You become eligible for a service retirement at age 55.
- You become eligible for a nonservice-connected disability retirement if, while employed by the City, you become totally incapable of performing the duties and functions of your City job due to a non-work-related illness or injury.

(You are eligible for service-connected disability retirement due to a work-related illness or injury at any time after being employed by the City, whether or not you are vested in the Retirement System.)

- You may leave your contributions to the retirement system on deposit if you leave City employment before reaching age 55. You subsequently become a "deferred vested" member of the system. Your contributions will continue to earn interest.
- You may leave City employment and later return to City employment without losing any service credit, provided you left your contributions to the system on deposit.

If you leave City employment before you have accrued five (5) years of City service, you are **not** vested and you are **not** eligible for any retirement benefits. Any contributions you have made to the retirement system will be returned to you when you leave your position with the City. See the earlier section "Withdrawal of Contributions" for more information.

If you become disabled before you have accrued five (5) years of City service, you are **not** eligible for disability retirement unless your disability is service connected.

Vesting

(Page intentionally left blank)

SERVICE RETIREMENT

QUALIFICATIONS

General

You must be 55 years of age with at least five (5) years of service, or have completed 30 years of City service (at any age) to qualify for service retirement.



County – City Communications Classification Employees

If you transferred to a City of San Jose communications classification position from a Santa Clara County communications position without a break in service, you are eligible for retirement after two (2) years of City service if you meet all of the following requirements:

- You are 55 years of age or older; and
- You became a member of this system before April 15, 1991; and
- You do not qualify for membership in this retirement system in any other manner.

(SJMC 3.28.1110)

Former Employees of Health or Communications Department

If you worked for the City Health Department or the City Communications Department, were transferred to the County when those departments were transferred, and were still working for the County at the time of your retirement, you may be eligible to receive a supplemental retirement benefit, in addition to the retirement benefits you receive from the county, under the old Chapter 3.24 retirement system instead of the current Chapter 3.28 system. (SJMC 3.28.1060) Contact the Retirement Staff for details.

Service Retirement

APPLICATION

Apply for your retirement benefits at least two (2) months before you plan to retire. Contact the Retirement Staff to apply, and a staff member will mail an application to you. A staff member will do your calculations and contact you to make an appointment to review your retirement benefits.

Any questions you have regarding your retirement pay and benefits should be brought up at this appointment. You will select the medical, dental, life and other insurance programs that you wish to keep during retirement. If you are married, you may have your spouse attend the appointment with you.

Please bring the following to this meeting:

- Certificate of marriage to your spouse, if you are married.
- Your spouse's Social Security Number, if you are married.
- Names, birth dates and social security numbers of your natural or adopted children (no stepchildren) 21 years of age and younger.
- Divorce decree(s) from prior marriage(s), if you have ever been divorced.

Computation of Service Retirement Allowance

COMPUTATION OF SERVICE RETIREMENT ALLOWANCE

If you are retiring directly from City service, or if you are a deferred vested member of the system, your retirement allowance is based upon the following formula:

$$\text{Final Compensation} \times 2\frac{1}{2}\% \times \text{Service Credit} = \text{Allowance}$$

To compute your retirement allowance, you need to determine the final compensation and service credit portions of this equation as follows.

FINAL COMPENSATION

Your final compensation is an average of your highest rates of base pay earned or earnable over 36 consecutive months of City service. It is calculated by dividing your base pay during your most highly paid 36 consecutive months of salary by 36.

For example, assume your most highly paid 36 months begin on January 11, 1987 and end on January 11, 1990. The table below shows how your final compensation is calculated:

Final Compensation: 36 Most Highly Paid Consecutive Months				
From Day/Month/Year	To Day/Month/Year	Pay Periods	Biweekly Rate	Total
1/11/87	6/27/87	12	\$1,000	\$12,000
6/28/87	6/25/88	26	1,100	28,600
6/26/88	6/24/89	26	1,200	31,200
6/25/89	1/06/90	14	1,300	18,200
1/06/90	1/11/90	3 work days	1,300	390
Total:				\$90,390.00
Final Compensation (divide Total by 36):				\$2,510.83

This figure of \$2,510.83 per month is your final compensation.

Computation of Service Retirement Allowance

SERVICE CREDIT

Service credit is the amount of time you worked for the City and were enrolled in the retirement system. The City uses a special formula that establishes your service credit for retirement purposes, as follows:

Each calendar year, you can accrue up to 1,739 hours of service credit toward retirement. Although you actually work 2,080 hours per year, the City's retirement system counts one year of service as 1,739 hours.

If you work more than 1,739 hours in one year, you still get 1,739 hours, or one year, of credit. If you are on a reduced (less than full-time) work schedule but work 1,739 hours in one year, you earn one year of credit. If you work fewer than 1,739 hours in one year, you divide the actual number of hours you worked by 1,739 and add that fraction of a year to your total service credit.

For example, if you have worked for the City more than 1,739 hours a year for each of 10 years and 4 pay periods of one year, you calculate your years of service as follows:

10 years = 10.00 years of Service Credit

4 pay periods = 320 hours

320 hours ÷ 1739 = 0.18 years of Service Credit

Total Service Credit: 10.18

So, having determined your final compensation and service credit, you can complete your retirement allowance equation as follows:

Final Compensation x 2 1/2% x Service Credit = Retirement Allowance

\$2,510.83 (Final Compensation) x 0.025 (2 1/2%) x 10.18 (Service Credit) = \$639.01

\$639.01 is your monthly retirement allowance.

RETIREMENT ALLOWANCE LIMITATION

In no case will any retiree receive a retirement allowance in excess of 75% of his or her final compensation.

DISABILITY RETIREMENT

QUALIFICATIONS

There are two types of disability retirements: service connected and nonservice connected. The qualifications for each are as follows:

Service-Connected Disability

- You must be permanently and totally incapable of performing the duties and functions of your City job due to illness or injury; and
- Your illness or injury must be work related.

Nonservice-Connected Disability

- You must be permanently and totally incapable of performing the duties and functions of your City job due to illness or injury that is **not** job related; and
- You must be vested in this retirement system.

You must explain the cause of your incapacity at the time you file your application for disability retirement. (SJMC 3.28.1210) You should provide supporting medical reports from your own doctor(s).

You do **not** qualify for a disability retirement if:

- You became disabled before you were a member of this retirement system; or
- You become disabled after your membership in this retirement is terminated or you are no longer a City employee; or
- You become disabled during a leave of absence from City service, unless you are on leave with full City compensation and pay (SJMC 3.28.1420); or
- You become disabled due to a nonservice-connected injury or illness and you are **not** vested in the retirement system; or
- You left City service and withdrew your accumulated contributions.

Disability Retirement

APPLICATION

If you are eligible for disability retirement, the Retirement Board may in some cases grant you a disability retirement without any request or application being made. Otherwise, an application for your disability retirement may be made by:

- You; or
- Someone authorized to apply for you on your behalf; or
- The Head of your Department; or
- The City Manager; or
- The Retirement Board.

(SJMC 3.28.1220-1230)

After you become disabled, a member of the Retirement Staff will help you (or your authorized representative) to prepare your application for disability retirement and answer any questions you have. You have the option of bringing your own doctor's medical documentation to the meeting or explaining your disability at the meeting.

You are eligible to apply for a disability within one of the following time periods:

- While you are still working; or
- Within four (4) months of your ceasing to work; or
- During the continuance of your disability if it continues after you have stopped working.

(SJMC 3.28.1240)

Disability Retirement

MEDICAL EXAMINATION

After you complete your application, a copy of it will be sent to the City Medical Director. You will be sent to independent doctors for evaluation of your condition, and to determine whether your disability is service connected or nonservice connected.

After this exam, the Medical Director will review your application and your own doctor's report together with the independent doctors' medical reports. The Medical Director will then make a report to the Retirement Board in order to assist them in their decision as to whether or not you are permanently and totally disabled.

If the Board feels it needs additional information to make a decision regarding your disability, it may request a review panel of three doctors belonging to the Santa Clara County Medical Society to review your case in order to analyze the status of your condition. The Board has the sole authority to determine whether or not it needs a review panel to assist it in its decision.

The Retirement Board will make the final decision as to the level of your disability and whether or not it is work related. If the Board is satisfied that you are completely incapable of performing your duties due to your disability, they will grant you your retirement and you will receive your disability retirement allowance.

(SJMC 3.28.1250 - 1270)

RETIREMENT BOARD HEARINGS

If you are not satisfied with the results of your Retirement Board hearing, you may request a rehearing of your application within 30 days after written notice of the Board's determination has been sent to you by mail. The Board will decide whether or not to hold a rehearing within 60 days of your request for rehearing.

(SJMC 3.28.240)

Disability Retirement

MEDICAL EXAMS DURING DISABILITY RETIREMENT

Once you have received a disability retirement, the Retirement Board may require you to undergo a medical examination to determine the status of your disability at any time prior to your reaching age 55. If, based on the results of this exam, the Retirement Board determines that you have again become capable of performing the duties of your position, and you are under age 55, you are immediately subject to reinstatement. Your disability retirement allowance may be terminated if you do not accept reinstatement.

You may be reinstated into your position or into another position in the same classification, subject to Civil Service rules. After reinstatement, you will again be a member of this retirement system, and will be credited for your past service as if you had never been retired.

(SJMC 3.28.1370-1380)

ALLOWANCE UNTIL REINSTATEMENT

Once it is determined you are no longer disabled, you will continue to receive your disability retirement allowance until the City reinstates you, or until:

- You reject an offer of reinstatement into your previous position or a position in the same classification; or
- You refuse or fail to report to work in your previous position or a position in the same classification when requested to do so; or
- You become unable to accept reinstatement into, or again become unable to perform the duties of, your previous position or a position in the same classification.

(SJMC 3.28.1440)

REFUSAL TO ACCEPT REINSTATEMENT

If you are receiving a disability retirement allowance and are subsequently found to be capable of performing the duties of your position, you must accept reinstatement and report for duty. If you fail to do so, all of your rights and benefits, and your survivors' rights and benefits, will be terminated. (SJMC 3.28.1390)

Disability Retirement

REFUSAL TO SUBMIT TO MEDICAL EXAM

If you fail or refuse to undergo any medical exam(s) that are required by the Retirement Board while you are receiving a disability retirement allowance, the Board may terminate your allowance. If your allowance is terminated, you will no longer have any right to restoration to duty, nor will you or any of your survivors be entitled to any allowances or benefits of this system.

However, if you apply for reinstatement of your disability retirement within one year of the termination of your allowance, and can prove at that time that you are still disabled, the Board may reinstate your disability retirement and allowance as of the date decided by the Board.

If you die before having your disability retirement and allowance reinstated, your surviving spouse or surviving child(ren) may apply to the Retirement Board for survivor benefits or death benefits. If they can prove that your disability continued until your death, the Board may grant them survivorship or death benefits to which they would have been entitled if your disability retirement had not been terminated. They must apply for these benefits **within one year from the date the Board terminated your disability retirement**. No survivorship allowances or death benefits will be granted to anyone unless application is made within this one-year period.

(SJMC 3.28.1410)

PERMANENTLY DISABLED STATUS AT AGE 55

If you are still incapable of performing the duties of your position when you reach age 55, you will be considered permanently disabled. You will no longer be subject to mandatory reinstatement, and your disability retirement allowance may not be canceled. (SJMC 3.28.1400)

DISABILITY ALLOWANCE VERSUS CONTRIBUTIONS

The amount of your disability allowance payments may not be restricted to the amount of your contributions to the retirement system. However, once you receive a disability retirement allowance, you are no longer eligible to withdraw your contributions from the system. (SJMC 3.28.1430)

Disability Retirement

REEMPLOYMENT UPON CESSATION OF DISABILITY

If you are age 69 1/2 or less, and if you and the City mutually agree, you may be reinstated from disability retirement into a position other than the position from which you were retired. Your disability retirement allowance would be terminated, so compensation earnable for this new position will not be reduced by any disability retirement allowance payments – you would receive the full salary for your new position. (SJMC 3.28.1449.5)

See the chapter titled "Returning to Work After Retirement" for more information.

Computation of Disability Retirement Allowance

COMPUTATION OF DISABILITY RETIREMENT ALLOWANCE

SERVICE-CONNECTED DISABILITY RETIREMENT

Your monthly allowance is calculated using the same formula as for a service retirement allowance:

Final Compensation \times 2 1/2% \times Service Credit =
Service-Connected Disability Retirement Allowance

In any case, your base retirement allowance will be at least forty percent (40%) of your final compensation, but not more than seventy-five percent (75%) of your final compensation. (SJMC 3.28.1280)

WORKERS' COMPENSATION OFFSET

If you receive Workers' Compensation payments due to your service-connected disability, those payments will reduce your monthly disability retirement allowance by up to the monthly equivalent of the Workers' Compensation benefit. For the purposes of the following example, assume Workers' Compensation pays \$140 per week.

Workers' Compensation Offset - Monthly

At \$140 per week, your monthly payment equals \$606.67 per month over one year:

$\$140 \times 52 \text{ weeks in a year} = \$7,280 \text{ per year}$

$\$7,280 \div 12 \text{ months} = \606.67 per month

Assuming your disability retirement allowance from this system is \$1,000 per month, your monthly retirement allowance would be paid as follows:

Original Disability Retirement Allowance:	\$1,000.00
Workers' Compensation offset:	<u>(606.67)</u>
Disability Retirement Allowance from this system:	\$393.33

Computation of Disability Retirement Allowance

Your total monthly allowance would be the sum of your Worker's Compensation payment plus your disability retirement allowance from this system: $\$606.67 + 393.33 = \$1,000$.

You would still receive your allowance of \$1,000 per month, but it would be paid to you from two different sources, this system and the Workers' Compensation system. The offset will continue as long as you receive payments from Workers' Compensation.

Workers' Compensation Offset - Lump Sum

If you receive a lump sum payment rather than a monthly payment from Workers' Compensation, this system will divide your lump sum over the number of months it covers, and make monthly deductions from your disability retirement allowance.

If, for example, after you retire you receive a lump sum payment of \$20,000, and you would have received \$140 per week (\$606.67 per month) if you had been paid in periodic payments, then your \$20,000 would be divided by \$606.67 per month to determine the number of months for which there would be an offset of your disability retirement allowance: $\$20,000 \div \$606.67 = 33$ months.

The \$606.67 will be deducted from your monthly disability retirement allowance for the next 33 months. After that, you will receive your full disability retirement allowance of \$1,000 per month with no offset.

However, if you receive a Workers' Compensation lump sum settlement **before** you retire, and if you are able to continue working after you receive it, you will receive offset credit for all the time you are able to work prior to retirement. Deductions can only be made from your disability retirement allowance, **not** from your regular salary.

If you continue to work for a period of time, but subsequently must retire because of your disability, the deductions will begin with your first disability retirement allowance payment. In the example above, you received an offset for the full lump sum amount because you received the lump sum **after** you retired.

If you continued to work for 20 months after receiving your lump sum, the deductions would only be made from the first 13 months (33 total minus 20 worked) of disability retirement allowance payments. No more deductions will be made after the 33-month period ends.

Computation of Disability Retirement Allowance

NONSERVICE-CONNECTED DISABILITY RETIREMENT ALLOWANCE

To qualify for nonservice-connected disability retirement, you must be vested in the retirement system, that is, have five (5) years or more of City service. (3.28.1290)

Your monthly allowance will be calculated using the following formula:

$$\text{Final Compensation} \times 2\frac{1}{2}\% \times \text{Service Credit} - \text{Offset} = \\ \text{Nonservice-Connected Disability Retirement Allowance}$$

Your base retirement allowance before offset will be at least forty percent (40%), but not more than seventy-five percent (75%), of your final compensation.

Under Age 55 Offset

If you are under 55 years of age, your retirement allowance will be offset by one-half (1/2) percent per year for each year under age 55.

For example, if you were 50 years of age with 10 years of service credit and a final compensation of \$2,500 per month, your retirement allowance would be reduced by 2.5%:

$$\text{One-half (1/2) percent} \times 5 \text{ years} = 2.5\%$$

$$40\% \text{ minimum retirement allowance minus } 2.5\% = 37.5\% \text{ retirement allowance}$$

$$2.5\% \times \$2,500 = \$62.50$$

Your disability retirement allowance would be reduced by \$62.50 per month.

(SJMC 3.28.1300)

Computation of Disability Retirement Allowance

DEDUCTIONS FOR EARNINGS OUTSIDE OF CITY EMPLOYMENT

If you receive a disability retirement prior to reaching age 55, and you subsequently take another job, your retirement allowance will be offset to the point where your total income equals the current base salary of the position from which you retired as follows:

- If your disability retirement allowance plus your outside earnings exceed the current base salary of the position from which you retired, then your allowance will be reduced to the point where your outside earnings plus your reduced allowance equal that salary.
- If your outside income itself exceeds the current base salary of the position from which you retired, then your disability retirement allowance will be reduced to \$1 plus the amount of your deductions for the insurance coverage and other benefits you have selected.
- If you receive any overpayment of your disability retirement allowance that, when added to your outside earnings for that period totals an amount in excess of the current base salary of the position from which you retired, then that excess amount may be deducted from future allowance payments or may be collected from you.

Once you reach age 55, this offset is no longer applicable, and you may receive your full disability retirement allowance plus additional outside earnings.

(SJMC 3.28.1330)

EARNINGS REPORTING REQUIREMENT

If you are a disability retiree, you must submit a monthly written statement of your total income and earnings from employment outside City service during your disability retirement to the Retirement Board. This statement must be filed within 10 days of the last day of the previous month. In addition, you must also file an annual income statement on or before May 1 of each year in a form provided by the Board.

RETURNING TO WORK AFTER RETIREMENT

The City offers retirees three different options for continuing their City careers after retiring: Alternative Employment, Reemployment, and Reinstatement.



ALTERNATIVE EMPLOYMENT

The purpose of the Alternative Employment (A.E.) program is to provide disabled City employees with an opportunity to continue to work for the City in alternative positions from those for which they are incapacitated. You may participate in this program if:

- You are a permanently disabled retiree; and
- You are under age 55.

Alternative Employment Pay

The A.E. program offers you the opportunity to earn the same compensation as the position you were in prior to your disability. Assume the current salary of your position prior to disability retirement was \$3,000 per month, that the disability retirement allowance you currently receive is \$1,400 per month, and that your new position will pay \$2,000 per month. Your pay would be:

A.E. Salary:	\$2,000
Disability Retirement Subsidy:	<u>1,000</u>
Monthly Income:	\$3,000 (Same as before disability)

You continue to accrue service credit and make contributions to the retirement system from your A.E. salary while in the program.

The retirement system subsidy amount will be recalculated each time the salary of your new position or your previous position is adjusted. In no event will the retirement system subsidy exceed the total retirement allowance, including cost-of-living increases, to which you are entitled due to your disability retirement.

Returning to Work After Retirement

Disability During Alternative Employment

If you again become disabled and can no longer perform the duties of your A.E. position, you have two options:

- You may resign and keep your original disability retirement allowance.
- You may apply for a new disability retirement. If the Board finds that you are disabled from your new position, your new allowance will be based on:
 - Your total years of service; and
 - Your final compensation in your A.E. position at the time you become disabled in that position; and
 - Whether or not the disability is service connected.

This new allowance supersedes your original disability retirement allowance.

(S)MC 3.28.1449.3)

Death Before Retirement from Alternative Employment

If you die after being reemployed under the A.E. program, but before retiring from A.E., your survivors will be eligible for the benefits they would receive as survivors of an active City employee.

Returning to Work After Retirement

Retirement from Alternative Employment

You may resign from your A.E. position at any time and keep your original disability retirement allowance, or you may continue in your A.E. position until:

- You become permanently disabled and can no longer perform the duties of your A.E. position; or
- You reach age 55 and are eligible for a service retirement. At this point you have three options:
 - You may resign and keep your original disability retirement allowance; or
 - You may apply to the Retirement Board for a service retirement, your retirement allowance being based on your total years of service before your disability plus your A.E. years and the final compensation of your A.E. position; or
 - You may continue to work until you decide to retire, at which time you may select either of the two previous options.

(SJMC 3.28.1449.11-12)

Returning to Work After Retirement

REEMPLOYMENT

If you and the City mutually agree, you may be reemployed and return to City service in a non-federated position, that is, a position that is **not** covered by this retirement system.

If you are interested in reemployment, you must apply to the Retirement Board in writing. The City will notify you whether or not there is a position available for you after you apply.

(SJMC 3.28.1441)

Reemployment Pay - Service Retirees

If you are a service retiree and you are reemployed by the City, your retirement allowance will be suspended as of the date you are reemployed. Once your reemployment ends, your retirement allowance will be reinstated.

You must pay for your medical and dental insurance premiums during reemployment. If you do not pay your medical and dental premiums while your allowance is suspended, you will **not** be eligible to re-enroll in the City's medical and dental insurance programs when your retirement allowance resumes.

(SJMC 3.28.1180, 3.28.1970, 3.28.2020)

Returning to Work After Retirement

Reemployment Pay - Disability Retirees

If you are a disability retiree under age 55 and you are reemployed by the City in a non-federated position, you will continue to receive your retirement allowance, except that **you may not receive compensation in excess of the current base salary of the position from which you retired.**

Therefore, during the time you are reemployed in a position where the pay is less than you were earning when you retired, you will receive:

- The compensation of your reemployment position; plus
- A disability retirement allowance that, when added to your reemployment position compensation, does not exceed the current base salary of the position from which you retired.

For example, assume the monthly salary of your new position is \$4000, and your retirement allowance is \$1700.

New Position Pays:	\$4000
Retirement Allowance:	<u>1700</u>
Total:	\$5700

Assume the current base salary of the position from which you retired is \$4800. You may not receive compensation in excess of this amount.

Total:	\$5700
Current Base Salary of Previous Position:	<u>(4800)</u>
Amount in excess of compensation you may receive:	\$900

This excess amount will be deducted from your retirement allowance of \$1700.

Retirement Allowance:	\$1700
Amount in excess of compensation you may receive:	<u>(900)</u>
Retirement Allowance during reemployment:	\$800

Your reduced retirement allowance of \$800 plus your reemployment salary of \$4000 equals the current monthly base salary of the position from which you retired, \$4800.

Returning to Work After Retirement

If the pay in your new position is equal to or more than the current base pay of your old position, then you will not receive any retirement allowance or disability retirement allowance.

Over Age 55

If you are reemployed into a federated position, all of the same rules apply as for a non-federated reemployment position, except that deductions will continue to be made from your disability retirement allowance after you reach age 55 such that you do not receive an income higher than the current base salary of the position from which you retired. (SJMC 3.28.1443)

Once you reach age 55, deductions will no longer be made from your disability retirement allowance, and you may receive both your reemployment salary and your full disability retirement allowance for as long as you continue in your non-federated reemployment position. (SJMC 3.28.1340)

Returning to Work After Retirement

REINSTATEMENT

If you are a **service retiree**, you may apply to the Retirement Board for reinstatement into the retirement system if you are reemployed by the City. Your retirement allowance will be cancelled upon your reinstatement. You will then go through normal City employment procedures, and you will be credited with the years of service to which you were entitled prior to retirement.

If you are a **disability retiree**, you may also apply to the Retirement Board for reinstatement into City service in a new position, unless you are no longer disabled and could perform the duties of your old position.

If you are found to be capable of performing the duties of the new position based on medical examination, you may be reinstated into City service, subject to Civil Service rules. Your disability retirement allowance will be cancelled once you have been reinstated. You will then go through normal City employment procedures. You will be credited with the years of service to which you were entitled prior to retirement and you will begin to accrue service credit toward a service retirement from your new position.

(SJMC 3.28.1350)

Retirement from Reinstatement

When you retire from your new position, you will receive the service retirement allowance to which you are entitled based on your combined years of service credit for the position you held before your retirement, and the position you held after you were reinstated. (SJMC 3.28.1360 and 3.28.1449.4)

If you were to become disabled after reinstatement, you would then be entitled to the disability retirement benefits provided to any other retirement system member.

Returning to Work After Retirement

(Page intentionally left blank)

MEDICAL AND DENTAL BENEFITS

MEDICAL BENEFIT QUALIFICATIONS

You may be entitled to medical insurance coverage after retirement if you meet the following qualifications:

- You are enrolled in one of the City's medical insurance plans when you retire or you are a deferred vested member with 15 or more years of service; and
- You apply to continue medical insurance coverage at the time of your retirement; and
- You agree to pay any applicable premiums for this coverage; and
- Your retirement allowance is enough to cover the premium costs, so that the premiums can be deducted from your retirement allowance check.



You may also continue medical insurance coverage for your spouse and other dependents if they were covered by the plan at the time of your retirement.

(SJMC 3.28.1970)

The retirement system may pay a portion of your premiums if:

- You have 15 years of service credit when you retire; or
- You are receiving a retirement allowance that is 37 1/2 % or more of your final compensation; or
- You would be receiving a retirement allowance that is 37 1/2 % or more of your final compensation if your workers' compensation offset did not apply. (See the chapter titled "Computation of Disability Retirement Allowance" for information on Workers' Compensation offset.)

(SJMC 3.28.1950)

Medical & Dental Benefits

MEDICAL BENEFITS FOR YOUR SURVIVORS

Your surviving spouse or child(ren) may be eligible for medical insurance coverage if you died before retiring, or were retired for service or disability, and they:

- Receive a survivorship allowance because of your death during your employment or during your retirement; and
- Were enrolled in one of the City's medical insurance plans at the time of your death; and
- Apply to continue medical insurance coverage at the time of your death; and
- Agree to pay any applicable premiums for this coverage; and
- Receive a survivorship allowance that is enough to cover the premium costs, so that the premiums can be deducted from the allowance.

In addition, your surviving spouse or child(ren) may be eligible for Retirement System contributions toward their premiums under the conditions listed below:

- You had 15 years of service credit; or
- You were receiving a retirement allowance that was 37 1/2 % or more of your final compensation; or
- You would have been receiving a retirement allowance that was 37 1/2 % or more of your final compensation if your workers' compensation offset did not apply. (See the chapter titled "Computation of Your Retirement Allowance" for information on Workers' Compensation offset.)

(SJMC 3.28.1960)

Medical & Dental Benefits

PREMIUMS FOR MEDICAL INSURANCE COVERAGE

For retirees who are eligible for Retirement System contributions toward their premiums, the Retirement System pays the portion of the premium equal to the highest premium paid by the City for any active federated employee. Members or survivors pay the difference between the premium for the plan they select and the portion of the premium paid by the City. Premium payments are deducted from your (or your survivor's) retirement allowance. (SJMC 3.28.1980)

Medical & Dental Benefits

QUALIFICATIONS FOR DENTAL BENEFITS

After retirement, you may continue your dental insurance coverage if you were enrolled in one of the City's dental insurance plans at the time you retired, you retire directly from active service, and:

- You have 5 years of service credit when you retire; or
- You are receiving a retirement allowance that is 37 1/2 % or more of your final compensation, or would be receiving a retirement allowance that is 37 1/2 % of your final compensation if your Workers' Compensation offset did not apply.

(SJMC 3.28.2000, 2010, 2020)

DENTAL BENEFITS FOR YOUR SURVIVORS

If your survivors were enrolled in one of the City's dental insurance plans at the time of your death, and they receive a survivorship allowance due to your death, they may be eligible to continue dental insurance coverage if you died while actively employed or after being retired directly from active service; and

- You had five years of service credit; or
- You were receiving, would have been eligible for, or would have been receiving if your Workers' Compensation offset did not apply, a retirement allowance that was 37 1/2 % or more of your final compensation.

(SJMC 3.28.2010)

PREMIUMS FOR DENTAL INSURANCE COVERAGE

Your dental insurance premium costs, or your survivors' costs, are paid from the retirement fund. (SJMC 3.28.2030)

COST-OF-LIVING ADJUSTMENTS

As of each April 1, your retirement allowance and/or your survivors' survivorship allowances will be adjusted to reflect changes in the Consumer Price Index (CPI). The resulting adjustment will remain in effect until March 31 of the following year.

No matter what the "official" cost-of-living change is, no allowances will be increased more than three percent over, or decreased more than three percent below, the allowance paid during the previous year (April 1 to March 31).

BASIS FOR ADJUSTMENTS

During the three months prior to each April 1, the Retirement Board will determine the cost-of-living increase or decrease for the previous calendar year. To determine the amount of this adjustment, the Board will use the most current December-to-December change in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland Metropolitan Area, published by the U.S. Department of Labor's Bureau of Labor Statistics.

This cost-of-living increase or decrease (subject to the three percent limitation) above or below the previous year's CPI, will be applied to all eligible retirement allowance payments for the period beginning on April 1 and continuing through the following March 31.

If the CPI increase exceeds three percent, the percentage excess will be accumulated in an individual reserve "bank" from year to year. The accumulated bank may be used to augment your cost-of-living adjustments in succeeding years when the CPI increase is less than three percent, or when the City Council approves special cost-of-living adjustments. However, no retirement allowance will be increased because of these accumulated increases unless they occurred:

- During or after the calendar year **within** which you retired from City service, if you retired within the first three months of the calendar year; or
- During or after the calendar year **following** the calendar year within which you retired from City service, if you retired within the last nine months of a calendar year. In no event, however, will these accumulated increases or decreases include adjustments made prior to the 1969 calendar year.

(S/JMC 3.44.040)

Cost-of-Living Adjustments to Your Allowance

LIMITATIONS ON DECREASES IN ALLOWANCE

No cost-of-living decrease will reduce your retirement or survivorship allowance below the amount to which you or your survivors were originally entitled.

(SJMC 3.44.080)

COST-OF-LIVING ADJUSTMENT ELIGIBILITY

To receive an allowance increase or decrease on April 1, you must:

- Have been retired for one full year with at least five years of service or a service-connected disability; or
- Be the survivor of an active employee for one full year; or
- Be the survivor of an eligible retiree whose retirement date was at least one year prior to April 1.

If you retire partway through the year (between April 1 and March 31), your retirement allowance cost-of-living adjustment will begin on the first day of the month following the one-year anniversary of your retirement. The adjustment will be prorated for the number of months remaining until the following April.

The example on the next page illustrates the events resulting in a cost-of-living adjustment to your allowance:

Cost-of-Living Adjustments to Your Allowance

1. You retire on June 10, 1989. For the purposes of this example, assume your retirement allowance is \$1,000 per month.
2. Assume the cost-of-living increase from December 1988 to December 1989 is three percent.
3. Because you retired **after** March 31, 1989, you are eligible for a partial year of cost-of-living adjustment benefits for the period July 1990 through March 1991 (9/12, or .75 of the year).
4. From June 10, 1989 - June 1990, your retirement allowance will remain \$1,000 per month.
5. Starting in July 1990, the first month following one year of retirement, you will receive your cost-of-living increase in addition to your allowance:

$$3\% \times .75 = 2.25\%$$

$$\$1,000 \times 2.25\% (\text{cost-of-living increase}) = \$22.50$$

$$\text{Your retirement allowance is } \$1,000 + \$22.50 = \$1,022.50$$

6. Assume the cost-of-living increase from December 1989 to December 1990 is four percent.
7. As of April 1, 1991, you will receive the full three percent increase and one percent will be added to your bank:

$$1,022.50 \times 0.03 = 30.68$$

$$1,022.50 + 30.68 = 1,053.18$$

Your allowance will then be \$1053.18 per month.

From then on, you are eligible for the full amount of cost-of-living increases (or decreases) that take effect each April 1. These increases (or decreases) are based on your original retirement allowance plus whatever cost-of-living adjustments have been made in prior years. In this example, your future cost-of-living adjustments would be made to your new retirement allowance of \$1,053.18 per month.

Cost-of-Living Adjustments to Your Allowance

ACCUMULATED COST-OF-LIVING ADJUSTMENTS

Changes in the actual cost of living may not always fall within the three percent increase and decrease range used by the Federated Retirement System. For this reason, the members are allowed to "bank" or accumulate any cost-of-living percentage increases above the maximum three percent paid by the system.

This banked amount will be paid out to you in the form of a larger cost-of-living increase during years when the actual cost-of-living index increases by less than three percent.

For example, if the cost-of-living index rose four percent in one year, you would receive the system's maximum three percent increase, and you would hold the remaining one percent in your bank.

	<u>Index Increase</u>	<u>System Pays</u>	<u>You Bank</u>	<u>Bank Balance</u>
Year 1	4%	3%	1%	1%
Year 2	5%	3%	2%	3%
Year 3	1 1/2%	3%	(2 1/2%)	1 1/2%
Year 4	2%	2 1/2%	0%	0%

In no case, however, will members have a negative balance in their banks. Cost-of-living adjustment bank balances will never fall below zero.

After you die, your eligible survivors, if any, will continue to receive cost-of-living increases each subsequent April. (SJMC 3.44.020-030)

For assistance in calculating the potential cost-of-living adjustments in your retirement or survivorship allowance, see the Retirement Staff.

SURVIVORSHIP AND BENEFICIARIES

SPOUSAL BENEFITS

Your surviving spouse is defined as the person to whom you are married both at the time of your retirement and at the time of your death.

Death Before Retirement (Active Or Deferred Vested)

If you die before your retirement, your surviving spouse or eligible child(ren) are entitled to the survivorship benefits described in this section if you meet either one of the following two (2) conditions at the time of your death:

- You are vested in the retirement system, meaning you have five (5) years of City service; or
- Your death is service connected.

(SJMC 3.28.1470)

Your spouse will receive the retirement allowance for which you were eligible had you retired the day you died, except that he/she will receive at least 40% of your final compensation, no matter what your retirement allowance would have been. Your spouse will receive your retirement allowance until he/she dies or remarries, except that, if you have 20 or more years of service and you are age 55 or older at the time of your death, your spouse will receive your retirement allowance for the rest of his/her life.

In no case will your spouse receive an allowance greater than 75% of your final compensation.

Death After Retirement

If you die after you have retired, your spouse will be paid a monthly allowance equal to 50% of the monthly retirement allowance you were receiving at the time of your death. This allowance will continue for the rest of your spouse's life, and will be adjusted for cost-of-living increases or decreases.

Survivorship & Beneficiaries

SURVIVING CHILD(REN)'S BENEFITS (IF YOU HAVE NO SPOUSE)

Surviving children are defined as your natural or legally adopted unmarried children who have not yet reached their 18th birthday, or their 22nd birthday if they are full-time students.

No benefits are paid to your surviving children if you have a surviving spouse. If you do **not** have a surviving spouse, your surviving children may each receive up to 25% of what the spousal allowance would have been. The maximum allowance paid to surviving children is 75% of the spousal allowance, as described below:

- If you have one child, he/she would receive 25% of the spousal allowance.
- Two children would receive 50% of the spousal allowance (25% each).
- If you have three or more children, 75% of the spousal allowance would be divided equally among them.

(SJMC 3.28.1450 - 1480, 3.28.1550-1590)

If your child is born after your death, he/she is eligible for a surviving child's allowance if he/she was conceived prior to your death. The allowance starts after he/she is born. Benefit payments to any other children will be readjusted after this child is born.

(SJMC 3.28.1530, 3.28.1630)

If your surviving spouse dies after your death, your surviving children will be paid a percentage of the spousal allowance as described above. (SJMC 3.28.1600)

Survivorship & Beneficiaries

Payment of Surviving Child's or Children's Allowance (If No Spouse)

Your child(ren)'s survivorship allowance will be paid to the custodian parent. The Retirement Board may, however, pay the allowance(s) to any other person, or directly to the child(ren), if it feels this is in the best interest of the child(ren).

As an alternative, you may file a Trust Designation form with the Retirement Board requesting that your child(ren)'s survivorship allowance is to be paid through any of the following:

- A named custodian for your child(ren) under the California Uniform Transfers to Minors Act; or
- A trustee of a Testamentary Trust; or
- A trustee of a Living Trust (Inter Vivos Trust).

If you want your child(ren)'s survivorship allowance to be distributed through one of these vehicles, you must legally name the custodian or establish the trust using one of these three vehicles, and you must put the information on an official trust designation form and file it with the Retirement Board naming the custodian or explaining that the trust exists. Such a trust must be legally approved by the courts prior to any payments being made.

The Board must be satisfied that payments to the persons you designate are in the best interest of your child(ren). Otherwise, they may change the way the allowance is to be paid.

(S)MC 3.28.1520-1525, 3.28.1610)

Survivorship & Beneficiaries

Surviving Children Enrolled in School (If No Spouse)

Your unmarried child(ren) may qualify for a surviving child's school allowance. To qualify for this benefit, your child(ren) must meet all of the following qualifications at the time of your death:

- Be entitled to a "Surviving Child Allowance" as described previously in this chapter.
- Be 18 to 21 years of age.
- Be unmarried.
- Be a "dependent," that is, he/she must be your natural or legally adopted child; and
 - He/she must have been living with you at the time of your death; or
 - You must have been contributing to your his/her support at the time of your death.
- Be enrolled in an accredited technical, trade or vocational school, a junior college, college or university. If the school is not accredited, its credits must be accepted, on transfer, by at least three (3) accredited institutions.
- Be a full-time student, that is, carrying a class load of 12 or more units at an accredited school, or carrying a class load that is considered full time by that school.

Your child is entitled to this allowance until he or she dies, marries, reaches his/her 22nd birthday, or is no longer a full-time student, whichever occurs first. He/she must submit a monthly school attendance status report to the Retirement Board. The amount of allowance he/she would receive is the same as if he/she were a "Surviving Child" as described previously in this chapter.

(S)MC 3.28.1750-1800)

Survivorship & Beneficiaries

OTHER BENEFICIARIES

If you have no surviving spouse or eligible children, you may designate a beneficiary to receive your death benefit by filing a beneficiary form with the Retirement Board. You may change your beneficiary at any time by filing a written notice of the change with the Retirement Board. If you have not named a beneficiary, the death benefit will be paid to your estate. This benefit consists of the following:

- Your contributions to the system plus their accumulated interest; and
- One-twelfth of your annual earned or earnable (whichever is greater) compensation during the twelve months immediately preceding your death times the number of full years of service credit to which you were entitled at the time of your death, up to a maximum of six (6) years. This amount may not exceed one-half of your compensation earned or compensation earnable in that twelve-month period.

(SJMC 3.28.1500)

This death benefit is a lump sum payment, but it may be paid to your beneficiary in installments if:

- You file to have the death benefit paid out in monthly installments, in which case regular interest will be credited on the unpaid balance of the benefits payable; or
- Your beneficiary chooses to receive the death benefit in installments. In this case, he/she must request installment payments in writing before receiving payment of any death benefit.

If the death benefit is paid in installments, the payments will total an amount equal to the actuarial value of a lump sum. The first installment will be paid on the first day of the month after the entire death benefit would be payable. Payments will continue to be made monthly after that until the lump sum's actuarial value has been paid.

(SJMC 3.28.1510)

Survivorship & Beneficiaries

OPTIONAL SETTLEMENTS

If you have no spouse or children, you have the option of reducing your own retirement allowance in order to provide an allowance to a beneficiary after your death. Your request must be filed in writing with the Board by the thirtieth day after your date of retirement. (SJMC 3.28.1660)

Once you elect to reduce your own retirement allowance for this purpose, you **cannot** have your base allowance increased or changed back to its original amount.

Your options include:

- A reduced retirement allowance paid to yourself until your death, and then have the same reduced allowance you chose paid to your beneficiary for the rest of his/her life. (SJMC 3.28.1670)
- A reduced retirement allowance paid to yourself until your death, and then have one-half of the reduced allowance you chose paid to your beneficiary for the rest of his/her life. (SJMC 3.28.1680)
- A reduced retirement allowance paid to yourself until your death, and then have a percentage, which you specify, of your retirement allowance paid to your beneficiary for the rest of his/her life. The actuarial equivalent of the benefits payable under this option may not exceed the actuarial equivalent of the benefits payable to your beneficiary if you had selected the first option. (SJMC 3.28.1690)

Beneficiaries of Optional Settlements

If you have a surviving spouse or surviving child(ren) at the time of your death, any optional settlements you have requested will be void, because these surviving members of your family will receive your benefits. A surviving child(ren) born after your death would also take precedence over any designated beneficiary. (SJMC 3.28.1700)

Any beneficiary you designate to receive an optional settlement benefit must be a natural person; that is, your beneficiary must be a real person, not a corporation, partnership, estate, animal or other entity. Your beneficiary must satisfy the Board that he/she is indeed your designated beneficiary and is entitled to receive the benefit(s) in question. (SJMC 3.28.1710)

Survivorship & Beneficiaries

SPECIAL DEATH BENEFIT

In addition to the benefits outlined above, if your death occurs after you have retired, \$500 will be paid to the beneficiary you have designated, or to your estate if no beneficiary is designated. (SJMC 3.28.1620)

BENEFIT FOR SURVIVORS OF MEMBERS NOT VESTED

If you were **not** vested at the time of your death or your death was not service connected, your survivor or beneficiary will receive:

- Your contributions to the system plus their accumulated interest; and
- One-twelfth of your annual earned or earnable (whichever is greater) compensation during the twelve months immediately preceding your death times the number of full years of service credit to which you were entitled at the time of your death, up to a maximum of six (6) years. This amount may not exceed one-half of your compensation earned or compensation earnable in that twelve-month period.

Survivorship & Beneficiaries

(Page intentionally left blank)

IRS LIMITS

In 1975, the U.S. Congress instituted limitations on the pension plan allowances and benefits that employers can pay to their employees. These limitations may reduce the allowance and benefits that you would otherwise receive from the City after you retire.



Those retirement systems that are not in compliance with Section 415 are subject to severe financial penalties, including the loss of tax-exempt status for the retirement system trust fund and immediate annual taxability of each employee's accrued retirement benefits.

In bringing this retirement system into compliance with Section 415, the City was allowed to protect the benefits of all those who were members of this retirement system prior to January 1, 1990, if it agreed to implement Section 415 limitations for those who became members on or after January 1, 1990.

Therefore, if you became a member of this retirement system on or after January 1, 1990, your benefits are subject to all the limitations of Section 415 of the Internal Revenue Code (IRC).

Benefit enhancements granted after October 14, 1987 are also subject to 415 limitations. Therefore, if you were a member of this system **before** January 1, 1990, your potential allowance will be calculated three different ways:

1. The maximum allowed by IRS 415 for your age at retirement;
2. Your benefit under the schedule in effect as of the day you retire;
3. Your benefit under the schedule in effect on October 14, 1987 (Final Compensation x 2 1/2% x Service Credit).

You will receive at least benefit #3. If they are higher, you will receive the lesser of benefit #1 or #2.

IRS Limits

DESCRIPTION OF IRC SECTION 415 LIMITS

If you were hired on or after January 1, 1990, your retirement allowance will be the **lower** of the following:

- The dollar limit set by Section 415; or
- 100% of your retirement allowance, as calculated using the retirement allowance formula in effect at the time of your retirement.

The maximum benefit payable is adjusted annually based on cost-of-living changes. This limit is reduced if you retire before:

- Age 65 for members born in 1937 or earlier;
- Age 66 for members born from 1938 through 1954;
- Age 67 for members born in 1955 or later.

ADDITIONAL LIMITATIONS

The list below summarizes additional adjustments put into effect by Section 415:

- Certain post-retirement death benefits may be reduced.
- Benefits paid after fewer than ten years of membership in the retirement system will be limited for service retirees and disability retirees.

SYSTEM MANAGEMENT

BOARD OF ADMINISTRATION

This retirement system is managed by the Board of Administration for the Federated City Employees Retirement System (referred to in this handbook as the Retirement Board or the Board). The Retirement Board consists of two City employees, one City Council member, one Civil Service Commission member, and one officer of a bank, insurance company, building and loan company or trust company in the community.

The Retirement Board has exclusive control of the administration and investment of the retirement fund, subject to the provisions of the San Jose Municipal Code and the Charter of the City of San Jose. It may make and enforce rules and regulations for the administration, management, and control of the retirement system and its funds.

No member of the Retirement Board may:

- Have any interest in any investment the Board makes, or in the gain or profit resulting from those investments; or
- Borrow funds from the system, or use the system's funds for anything other than making current and necessary payments authorized by the Board; or
- Become an indorser, surety, or obligor on investments made by the Board.

(SJMC 3.2B.130)

The Retirement Board may retain professional investment advisors as needed to assist them in setting investment policies for the retirement fund. (SJMC 3.28.370)

The Retirement Board must keep all necessary records for the system, including:

- Your contributions;
- The members' total contributions;
- The City's accumulated contributions;
- All the money in the system;
- The investment and distribution of the money in the system.

(SJMC 3.28.120)

System Management

ACTUARIAL INVESTIGATIONS

The Retirement Board must keep data for actuarial evaluations of this system. These are statistical calculations analyzing the soundness of this system. An actuarial investigation of this system must be conducted at least once every five (5) years. This investigation will result in a report that includes:

- The mortality, service, and compensation experience of members and survivors receiving benefits; and
- An actuarial evaluation of the system's assets and liabilities; and
- A financial statement showing the actuarial valuation of the system's assets and liabilities; and
- Any other information relevant to the system.

(SJMC 3.28.170)

CREDITING OF INTEREST

Periodically the Retirement Board will also determine the rate of interest being credited to your contributions to the retirement fund (SJMC 3.28.160). The Board will credit all contributions in the retirement fund, both your contributions and the City's contributions, with interest at the current regular interest rate compounded each June 30 and December 31. (SJMC 3.28.220)

System Management

RETIREMENT BOARD'S ANNUAL REPORT

The Retirement Board must submit an annual fiscal report of this system's funds for the preceding year to the City Council within 90 days after the end of the fiscal year, or 30 days after receipt of an audited annual fiscal report from a certified public accounting firm. The report must:

- Contain a statement of the Board's work for that period;
- Show all receipts and disbursements;
- Show the names of all persons receiving benefits from the retirement system, the nature of their benefits, and the amounts paid to each;
- Show the balance remaining in the retirement fund after the payments of benefits.

The report may also contain recommendations for or against changes in the retirement system.

(S)MC 3.28.260)

EXHIBIT 6

Federated City Employees' Retirement System



Handbook Fall 1995

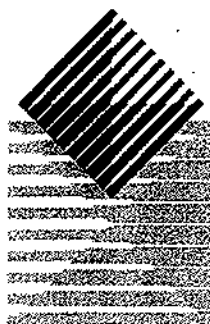


TABLE OF CONTENTS

Chapter

1 Introduction	1
2 System Management	3
Retirement Board	3
Actuarial Investigations	4
Board Meetings and Hearings.	4
3 Membership	5
Eligible and Ineligible Employees	5
Special Membership Qualifications	6
Termination of Membership	7
Members' Responsibilities	7
4 Contributions	9
Contribution Rates	9
Social Security and Medicare	10
Tax Treatment of Contributions	10
Contributions During Military Service	10
Contributions During Absence Due to Service-Connected Injury	11
Transfer of Contributions To Police & Fire Department Retirement Plan	11
Withdrawal of Contributions	12
5 Benefit Eligibility Requirements	13
6 Separation From City Service Prior to Retirement	15
Options at Time of Separation	15
Return of Contributions	17
Right to Redeposit Withdrawn Contributions Upon Return to City Employment	17
Right to Request Return of Contributions	19



7	Service Retirement	21
	Eligibility Requirements	21
	Computation of Service Retirement Allowance	22
	Returning to City Employment After Service Retirement	23
8	Disability Retirement	25
	Disability Retirement Benefit Chart	26
	Summary of Disability Retirement Process	29
	Medical Examination	30
	Service-Connected Disability Retirement Allowance	31
	Workers' Compensation Offset	31
	Nonservice-Connected Disability Retirement Allowance	34
	Outside Earnings During Disability Retirement	35
	Reemployment of Disability Retirees (Alternate Employment)	37
	Reemployment into Non-Federated Position	40
	Reinstatement to Duty After Disability Retirement	40
9	Death After Retirement	43
	Death After Retirement With Less Than 5 Years of Service Credit	43
	Death After Retirement With More Than 5 Years of Service Credit	44
	Special Death Benefit	46
	Optional Survivorship Allowances	47
10	Death Before Retirement	49
	Nonservice-Connected Death With Less Than 5 Years of Service	49
	More Than 5 Years of Service or Service-Connected Death	50
11	Medical and Dental Benefits	55
	Medical Insurance Eligibility Requirements for Retirees	55
	Medical Insurance for Survivors	56
	Dental Insurance Eligibility Requirements for Retirees	57
	Dental Insurance for Survivors	58





12	Surviving Child's School Allowance	59
13	Cost-of-living Adjustments	63
14	Reciprocity	67
	Summary	67
	General Eligibility Requirements	68
	Use of Final Average Salary From Reciprocal System	68
	Combining Service in Reciprocal System to Meet Minimum Service Requirements	70
	Reciprocal Benefit When Member Receives Disability Allowance From a Reciprocal System	71
	Survivorship or Death Benefits When Member Dies as a Member of a Reciprocal System	71
	Special Redeposit Provisions	72
	Electing Reciprocity	72
15	IRS Limits	73
16	Glossary	75



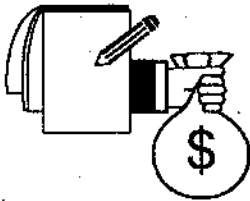


CONTRIBUTIONS

Both you and the City make contributions to the retirement system. The **contribution rates** are the percentages of your salary that you and the City each pay into the retirement system. Your contributions are made through payroll deductions. The Retirement Board sets, and from time to time, changes the contribution rates necessary to make the retirement system actuarially sound. This ensures that the retirement system will have sufficient funds to provide your retirement benefits. The Board's determination is based on actuarial studies of the retirement fund's projected benefit costs and expected fund earnings. Contribution rates may be changed after periodic actuarial reviews, which are currently performed every two years.

The **contribution ratio** is the ratio between the portion of total contributions the City pays and the portion of contributions you pay. The contribution ratio for the normal costs of the plan is eight to three: for every \$8.00 paid by the City, you pay \$3.00. Other contributions, such as contributions attributable to cost-of-living adjustments, prior service, and health insurance, have their own contribution ratios.

[SJMC 3.28.700-720 & 3.28.860]



RECORD OF CONTRIBUTIONS

Although all contributions to the retirement system are kept together in the retirement fund, a record is kept of your contributions, and your contributions are credited to your individual "account." Your "**accumulated contributions**" represent the total of all your contributions to the retirement system.

[SJMC 3.28.770]

You will receive an annual notice documenting your retirement service credit, your contributions to the plan, and interest earned on your contributions.



SOCIAL SECURITY

City employees do not contribute to the Social Security system and do not receive Social Security credit for their City service. You may still be eligible for Social Security benefits if you were previously employed by some other institution or company that did contribute to Social Security. However, if you receive a government pension such as one from the City of San José, your Social Security benefit may be reduced. Contact your local Social Security office to find out whether or not you are eligible for benefits.

MEDICARE

The Medicare portion of Social Security (FICA) tax is withheld from payroll checks of employees hired after March 31, 1986. Please call your local Social Security office if you have any questions concerning Medicare benefits.

TAX TREATMENT OF CONTRIBUTIONS

Starting in April 1987, your contributions to the retirement system are paid with pre-tax dollars, reducing your taxable income. Prior to April 1987, your contributions were paid into the system with after-tax dollars. Because they were made with after-tax dollars, contributions made to the retirement system before April 1987 will not be subject to additional taxation when they are withdrawn. If you receive a retirement allowance, the after-tax contributions you made prior to April 1987 are prorated over your life expectancy as a tax-free portion of your pension. [SJM 3.28.765]

CONTRIBUTIONS DURING MILITARY SERVICE

If you take a leave of absence without pay in order to serve in the military during a time of war or national emergency, or if you are drafted in peacetime, the City will make its contributions, plus the contributions you would have been making if you were not on leave, into the retirement system on your behalf when you return to City service. The contributions made by the City will be for the time period that you are on leave. You must return to City employment within six (6) months of the end of your military service to receive this benefit.



If you are absent on military service, you may request a return of your contributions. However, this would terminate your membership in the retirement system, and neither you nor your spouse or children would have any rights under the retirement system.

[SJMC 3.28.630]

CONTRIBUTIONS DURING ABSENCE DUE TO SERVICE-CONNECTED INJURY

If you are absent from City service due to an injury or illness that is determined to have arisen out of and in the course of your employment, and you are not receiving pay during your absence, you have the option of contributing the same amount of contributions that you would have contributed if you were working during that period. You will then be given retirement service credit for that time. If you do not make the retirement contributions during an absence, that time will still count towards meeting any minimum service requirements for benefits. That time, however, will not count towards the calculation of your benefits. This benefit does not apply to part-time employees. [SJMC 3.28.640]

TRANSFER OF CONTRIBUTIONS TO THE POLICE & FIRE DEPARTMENT RETIREMENT PLAN

If you terminate your position that qualifies you for membership in this retirement system and immediately take a position that qualifies you for membership in the Police & Fire Department Retirement Plan, you may elect to transfer your service credit from this retirement system to the Police & Fire Department Retirement Plan. You must elect this option within 90 days of becoming a member of the Police & Fire Plan.

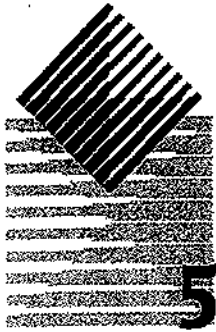
If you elect this option, you must pay into the Police & Fire Plan an amount of money equal to what your Police & Fire account would have been had you been a member of the Police & Fire Plan during all of your service in the Federated System. You may transfer your accumulated contributions from this system to the Police & Fire Plan to make this payment. Contact the Retirement Department for more information.

[SJMC 3.36.610(D)]

WITHDRAWAL OF CONTRIBUTIONS

You may not withdraw your contributions from the retirement system unless your membership in the system is terminated. Termination of your membership may be as a result of voluntary resignation, termination, or death.

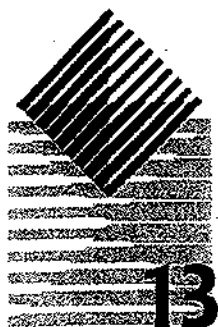




BENEFIT ELIGIBILITY REQUIREMENTS

You become eligible to apply for benefits according to the following schedule:

Benefit	Minimum Age	Minimum Service
Service Retirement (Please refer to Chapter 7.)	None	30 years
Service Retirement (Please refer to Chapter 7.)	55	5 years
If you separate from City service, you may leave your contributions on deposit and apply for a retirement allowance at age 55. (Please refer to Chapter 6.)	None	5 years
If you separate from City service and meet qualifications for reciprocity, you can leave your contributions on deposit and apply for a retirement allowance when eligible. (Please refer to Chapter 14.)	None	None
Service-connected Disability (Please refer to Chapter 8.)	None	None
Nonservice-connected Disability (Please refer to Chapter 8.)	None	5 years



COST-OF-LIVING ADJUSTMENTS

After receiving a retirement or survivorship allowance for one year, you are eligible for cost-of-living adjustments. On April 1 of every year, your retirement allowance or your survivorship allowance will be adjusted to reflect changes in the Consumer Price Index (CPI). The resulting adjustment will remain in effect until March 31 of the following year.

No matter what the “official” cost-of-living change is, no allowance will be increased more than 3 percent over, or decreased more than 3 percent below, the allowance paid during the previous year (April 1 to March 31).

Cost-Of-Living Adjustment Eligibility

To receive an allowance increase or decrease on April 1, you must:

- Have been receiving a retirement allowance for at least one full year; or
- Have been the survivor of an active employee for at least one full year; or
- Have been the survivor of an eligible retiree who died at least one full year earlier.

If you retire part way through the year (**between April 1 and March 31**), your first retirement allowance cost-of-living adjustment will begin on the first day of the month **following** the one year anniversary of your retirement. The adjustment will be prorated for the number of months remaining until the following April. Adjustments occur on April 1. (See the example on page 65.)

If you die part way through the year (**between April 1 and March 31**), the cost-of-living adjustment in your survivors’ allowance(s) will begin on the first day of the month **following** the one year anniversary of your death. The adjustment will be prorated for the number of months remaining until the following April. Adjustments occur on April 1. (See the example on page 65.)



Determination of Cost-of-Living Adjustment

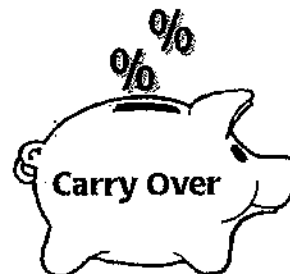
Before each April 1, the Retirement Board will determine the cost-of-living increase or decrease for the previous calendar year. To determine the amount of this adjustment, the Board will use the most current December-to-December change in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland Metropolitan Area, published by the U.S. Department of Labor's Bureau of Labor Statistics.

This cost-of-living increase or decrease (subject to the 3 percent limitation) above or below the previous year's CPI, will be applied to all eligible retirement allowance payments for the period beginning on April 1 and will continue through the following March 31.

3%

If the CPI increase exceeds 3 percent, the excess percentage will be accumulated from year to year in your "carry-over" account. (Only percentage points are tracked in the "carry-over" account, not actual money.) In years when the CPI increase is less than 3 percent, the Retirement Department will use your "carry-over" percentage points, if any, to raise your cost-of-living adjustment up to 3 percent.

[SJMC 3.44.040]



Limitations on Decreases in Allowance

No cost-of-living decrease will reduce your retirement or survivorship allowance below the amount to which you or your survivors were originally entitled.

[SJMC 3.44.080]

Example of Cost-of-Living Calculation

1. You retire on June 10, 1995. For the purposes of this example, assume your retirement allowance is \$3,000 per month.
2. Assume the CPI for December 1994 shows a 3.5% cost-of-living increase and that the CPI for December 1995 shows a 5.5% cost-of-living increase. The difference between December 1995 and December 1994 is 2%.
3. From June 10, 1995 - June 30, 1996, your retirement allowance will remain \$3,000 per month.
4. Starting in July 1996, the first month following one year of retirement, you will receive your first cost-of-living adjustment in addition to your allowance.
5. Because you retired after March 31, 1995, you are eligible for a partial year of cost-of-living adjustment benefits for the period July 1996 through March 1997 (9/12, or 75% of the year).

$$2\% \times .75 = 1.5\%$$

$$\$3,000 \times 1.5\% \text{ (cost-of-living increase)} = \$45.00$$

$$\text{Your retirement allowance will become } \$3,000 + \$45.00 = \$3,045.00$$

6. Assume the cost-of-living increase from December 1995 to December 1996 is 4%.
7. As of April 1, 1997, you will receive the full 3% increase and 1% will be added to your "carry-over" account.

$$\$3,045.00 \times 3\% = \$91.35$$

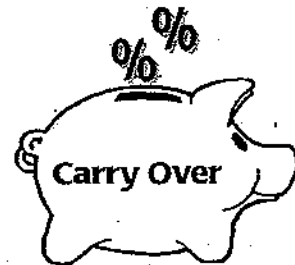
$$\$3,045.00 + \$91.35 = \$3,136.35$$

$$\text{Your allowance will then be } \$3,136.35 \text{ per month.}$$

From then on, you are eligible for the full amount of cost-of-living increases (or decreases) that take effect each April 1. These increases (or decreases) are based on your original retirement allowance plus whatever cost-of-living adjustments have been made in prior years. In this example, your next cost-of-living adjustment would be made to your new retirement allowance of \$3,136.35 per month.

"Carry-Over" Accounts

Changes in the Consumer Price Index may be greater than the 3 percent increase and decrease allowed by the Federated City Employees' Retirement System. For this reason, members are allowed to accumulate any cost-of-living percentage increases above the maximum 3 percent paid by the system. No actual money is kept in the "carry-over" account. It is only a method to track excess percentage points.



The percentage points in your "carry-over" account, if any, will be used to make your cost-of-living increase 3 percent in years when the actual cost-of-living index increases by less than 3 percent.

For example, if the cost-of-living index rose 4 percent in one year, you would receive the system's maximum 3 percent increase, and 1 percent would be added to your "carry-over" account.

	<u>Index Increase</u>	<u>Plan Pays</u>	<u>Add to "Carry-over"</u>	<u>"Carry-over" Account Balance</u>
Year 1	4%	3%	1%	1%
Year 2	5%	3%	2%	3%
Year 3	1 1/2%	3%	(2 1/2%)	1/2%
Year 4	2%	2 1/2%	0%	0%

In no case will members have a negative balance in their "carry-over" account. You cannot draw a larger percent than is available in your "carry-over" account. (See example in Year 4.) This process is done automatically by the Retirement Department. There is no need to request deductions from your "carry-over" account.



EXHIBIT 7

Federated City Employees' Retirement System



Handbook Fall 1997

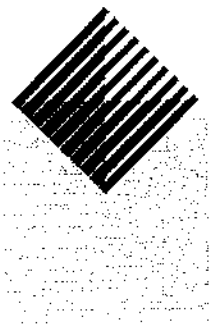


TABLE OF CONTENTS

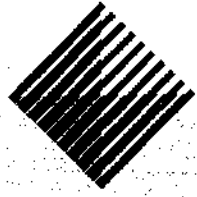
Chapter

1 Introduction	1
2 System Management	3
Retirement Board	3
Actuarial Investigations	4
Board Meetings and Hearings.	4
3 Membership	5
Eligible and Ineligible Employees	5
Special Membership Qualifications	6
Termination of Membership	7
Members' Responsibilities	7
4 Contributions	9
Contribution Rates	9
Social Security and Medicare	10
Tax Treatment of Contributions	10
Contributions During Military Service	10
Contributions During Absence Due to Service-Connected Injury	11
Transfer of Contributions To Police & Fire Department Retirement Plan	11
Withdrawal of Contributions	12
5 Benefit Eligibility Requirements	13
6 Separation From City Service Prior to Retirement	15
Options at Time of Separation	15
Return of Contributions	17
Right to Redeposit Withdrawn Contributions Upon Return to City Employment	17
Right to Request Return of Contributions	19

7	Service Retirement	21
	Eligibility Requirements	21
	Computation of Service Retirement Allowance	22
	Returning to City Employment After Service Retirement	23
8	Disability Retirement	25
	Disability Retirement Benefit Chart	26
	Summary of Disability Retirement Process	29
	Medical Examination	30
	Service-Connected Disability Retirement Allowance	31
	Workers' Compensation Offset	31
	Nonservice-Connected Disability Retirement Allowance	34
	Outside Earnings During Disability Retirement	35
	Reemployment of Disability Retirees (Alternate Employment)	37
	Reemployment into Non-Federated Position	40
	Reinstatement to Duty After Disability Retirement	40
9	Death After Retirement	43
	Death After Retirement With Less Than 5 Years of Service Credit	43
	Death After Retirement With More Than 5 Years of Service Credit	44
	Special Death Benefit	46
	Optional Survivorship Allowances	47
10	Death Before Retirement	49
	Nonservice-Connected Death With Less Than 5 Years of Service	49
	More Than 5 Years of Service or Service-Connected Death	50
11	Medical and Dental Benefits	55
	Medical Insurance Eligibility Requirements for Retirees.	55
	Medical Insurance for Survivors	56
	Dental Insurance Eligibility Requirements for Retirees	57
	Dental Insurance for Survivors	58



12	Surviving Child's School Allowance	59
13	Cost-of-living Adjustments	63
14	Reciprocity	67
	Summary	67
	General Eligibility Requirements	68
	Use of Final Average Salary From Reciprocal System	68
	Combining Service in Reciprocal System to Meet Minimum Service Requirements	70
	Reciprocal Benefit When Member Receives Disability Allowance From a Reciprocal System	71
	Survivorship or Death Benefits When Member Dies as a Member of a Reciprocal System	71
	Special Redeposit Provisions	72
	Electing Reciprocity	72
15	IRS Limits	73
16	Glossary	75

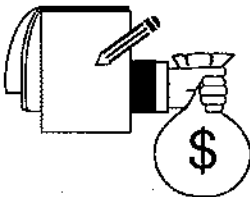


4 CONTRIBUTIONS

Both you and the City make contributions to the retirement system. The **contribution rates** are the percentages of your salary that you and the City each pay into the retirement system. Your contributions are made through payroll deductions. The Retirement Board sets, and from time to time, changes the contribution rates necessary to make the retirement system actuarially sound. This ensures that the retirement system will have sufficient funds to provide your retirement benefits. The Board's determination is based on actuarial studies of the retirement fund's projected benefit costs and expected fund earnings. Contribution rates may be changed after periodic actuarial reviews, which are currently performed every two years.

The **contribution ratio** is the ratio between the portion of total contributions the City pays and the portion of contributions you pay. The contribution ratio for the normal costs of the plan is eight to three: for every \$8.00 paid by the City, you pay \$3.00. Other contributions, such as contributions attributable to cost-of-living adjustments, prior service, and health insurance, have their own contribution ratios.

[SJMC 3.28.700-720 & 3.28.860]



RECORD OF CONTRIBUTIONS

Although all contributions to the retirement system are kept together in the retirement fund, a record is kept of your contributions, and your contributions are credited to your individual "account." Your "**accumulated contributions**" represent the total of all your contributions to the retirement system.

[SJMC 3.28.770]

You will receive an annual notice documenting your retirement service credit, your contributions to the plan, and interest earned on your contributions.



SOCIAL SECURITY

City employees do not contribute to the Social Security system and do not receive Social Security credit for their City service. You may still be eligible for Social Security benefits if you were previously employed by some other institution or company that did contribute to Social Security. However, if you receive a government pension such as one from the City of San José, your Social Security benefit may be reduced. Contact your local Social Security office to find out whether or not you are eligible for benefits.

MEDICARE

The Medicare portion of Social Security (FICA) tax is withheld from payroll checks of employees hired after March 31, 1986. Please call your local Social Security office if you have any questions concerning Medicare benefits.

TAX TREATMENT OF CONTRIBUTIONS

Starting in April 1987, your contributions to the retirement system are paid with pre-tax dollars, reducing your taxable income. Prior to April 1987, your contributions were paid into the system with after-tax dollars. Because they were made with after-tax dollars, contributions made to the retirement system before April 1987 will not be subject to additional taxation when they are withdrawn. If you receive a retirement allowance, the after-tax contributions you made prior to April 1987 are prorated as a tax-free portion of your pension.

[SJM 3.28.765]

CONTRIBUTIONS DURING MILITARY SERVICE

If you take a leave of absence without pay in order to serve in the military during a time of war or national emergency, or if you are drafted in peacetime, the City will make its contributions, plus the contributions you would have been making if you were not on leave, into the retirement system on your behalf when you return to City service. The contributions made by the City will be for the time period that you are on leave. You must return to City employment within six (6) months of the end of your military service to receive this benefit.



If you are absent on military service, you may request a return of your contributions. However, this would terminate your membership in the retirement system, and neither you nor your spouse or children would have any rights under the retirement system.

[SJMC 3.28.630]

CONTRIBUTIONS DURING ABSENCE DUE TO SERVICE-CONNECTED INJURY

If you are absent from City service due to an injury or illness that is determined to have arisen out of and in the course of your employment, and you are not receiving pay during your absence, you have the option of contributing the same amount of contributions that you would have contributed if you were working during that period. You will then be given retirement service credit for that time. If you do not make the retirement contributions during an absence, that time will still count towards meeting any minimum service requirements for benefits. That time, however, will not count towards the calculation of your benefits. This benefit does not apply to part-time employees. [SJMC 3.28.640]

TRANSFER OF CONTRIBUTIONS TO THE POLICE & FIRE DEPARTMENT RETIREMENT PLAN

If you terminate your position that qualifies you for membership in this retirement system and immediately take a position that qualifies you for membership in the Police & Fire Department Retirement Plan, you may elect to transfer your service credit from this retirement system to the Police & Fire Department Retirement Plan. You must elect this option within 90 days of becoming a member of the Police & Fire Plan.

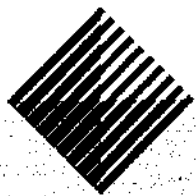
If you elect this option, you must pay into the Police & Fire Plan an amount of money equal to what your Police & Fire account would have been had you been a member of the Police & Fire Plan during all of your service in the Federated System. You may transfer your accumulated contributions from this system to the Police & Fire Plan to make this payment. Contact the Retirement Department for more information.

[SJMC 3.36.610(D)]

WITHDRAWAL OF CONTRIBUTIONS

You may not withdraw your contributions from the retirement system unless your membership in the system is terminated. Termination of your membership may be as a result of voluntary resignation, termination, or death.





5

BENEFIT ELIGIBILITY REQUIREMENTS

You become eligible to apply for benefits according to the following schedule:

Benefit	Minimum Age	Minimum Service
Service Retirement (Please refer to Chapter 7.)	None	30 years
Service Retirement (Please refer to Chapter 7.)	55	5 years
If you separate from City service, you may leave your contributions on deposit and apply for a retirement allowance at age 55. (Please refer to Chapter 6.)	None	5 years
If you separate from City service and meet qualifications for reciprocity, you can leave your contributions on deposit and apply for a retirement allowance when eligible. (Please refer to Chapter 14.)	None	None
Service-connected Disability (Please refer to Chapter 8.)	None	None
Nonservice-connected Disability (Please refer to Chapter 8.)	None	5 years





7

SERVICE RETIREMENT

ELIGIBILITY REQUIREMENTS

Minimum Service	Minimum Age	Benefit
5 years	55	Service Retirement SJMC 3.28.1110(A)(1)
30 years	None	Service Retirement SJMC 3.28.1110(A)(2)
2 years	55	Service Retirement for members who transferred, without break in service, from Santa Clara County Communications to a City Communications classification before April 15, 1991 SJMC 3.28.1110(A)(3)

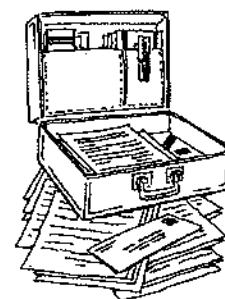
Application

We suggest that you apply for your service retirement benefits two (2) months before you plan to retire. You can choose to retire on any day, but most members choose to retire at the end of a pay period to receive the full amount of their last active payroll check. Contact the Department of Retirement Services to request that an application be mailed to you, or feel free pick one up at the Retirement Department office.



We do require copies of the following:

- Certificate of marriage, birth certificate for you and your spouse, and spouse's social security number, if you are married.
- Names, birth dates, and social security numbers of your natural or adopted children 21 years of age and younger.
- Divorce decree(s) from prior marriage(s), and property settlements covering your retirement benefits, if you have ever been divorced.



Once your application is received, your request is placed on the agenda for the Retirement Board meeting. A staff member will be assigned to assist you through the process and calculate your retirement benefits. The staff member will schedule an appointment to review all your benefits, fill out required paperwork, and answer any questions you may have. We strongly encourage you to bring your spouse or significant other with you to the "retirement counseling" appointment.

COMPUTATION OF SERVICE RETIREMENT ALLOWANCE



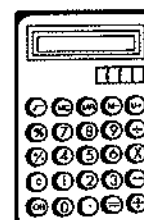
The formula used to determine your monthly service retirement allowance is:

$$\text{Years of Service} \times 2.5\% \times \text{Final Compensation}$$

[SJM C 3.28.1110(B)]

For example, if you leave City service with 25 years of retirement service credit and your final compensation was \$3,000 per month, your monthly benefit would be:

$$25 \times 2.5\% \times \$3,000 = \$1,875$$



To compute your own retirement allowance, you need to determine the final compensation and service credit portions of the formula. Please refer to the glossary for detailed explanations of final compensation and service credit.



Retirement Allowance Limitation

In no case will any retiree receive a retirement allowance in excess of 75% of his or her final compensation. Your benefit reaches 75% of final compensation at 30 years of service.

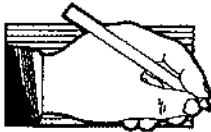
[SJMC 3.28.1110(B)]



RETURNING TO CITY EMPLOYMENT AFTER SERVICE RETIREMENT

Reinstatement from Retirement to Reenter Federated City Service

Once you have received a service retirement, you cannot be reemployed by the City to render Federated city service unless you are reinstated from your service retirement. Federated city service means City service for which you are entitled to credit under the Federated Employees' Retirement System. [SJMC 3.28.610]



You may apply in writing to the Retirement Board for reinstatement. In order to be reinstated, the Board must find that:

- Based on medical and physical examination, you are not incapacitated to perform the duties of the position to which you propose to be appointed

Once reinstated:

- You may be reemployed by the City in the same manner as it employs persons who have not been retired
- Your service retirement allowance will be cancelled
- You will again be a member of the retirement system
- You will have credit in the retirement system for the service you had prior to your retirement

[SJMC 3.28.1160 and 3.28.1170]

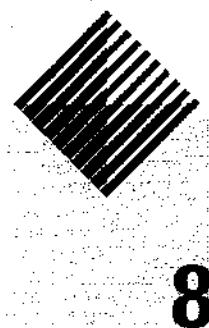


Reemployment of Service Retirees for Service Other than Federated City Service

If you are reemployed by the City to a position that does not qualify you for credit in the Federated Employees' Retirement System, other than as an independent contractor, your service retirement allowance will be suspended during your reemployment. This does not apply if you are elected or appointed to the City Council or any board or commission of the City.

[SJMC 3.28.1180]





8

DISABILITY RETIREMENT

If you are disabled, a disability retirement may be granted if:

- Your disability is of permanent or extended and uncertain duration
- Your disability occurred while you were an employee of the City and a member of the Federated Retirement System
- Your disability, due to injury or disease, renders you physically or mentally incapable of continuing to satisfactorily assume the responsibilities and perform the duties of your position and of any other position in the same classification of positions to which the City may offer to transfer you.

The determination of disability is made by the Retirement Board on the basis of competent medical opinion.

[SJMC 3.28.1210]

Situations Where Member Is Not Eligible for Disability Retirement Benefits

You do **not** qualify for any type of disability retirement if:

- You became disabled before you were a member of this retirement system
- You become disabled after your membership in this retirement system is terminated or you are no longer a City employee
- You become disabled during a leave of absence from City service, **unless** you are on leave with full compensation or pay
- You become disabled due to a nonservice-connected injury or illness and you have less than five (5) years of service credit in the retirement system.

[SJMC 3.28.1420 & 3.28.1290(A)]



To figure out the monthly offset for the lump sum:

The offset ratio is multiplied by the monthly equivalent to determine the amount of the monthly offset: $69.70\% \times \$606.67 = \422.84

The monthly offset amount, in this case, would be \$422.84. Therefore, the retirement allowance would be offset by \$422.84 on a monthly basis until the \$13,940.00 total would be offset.

However, if you receive a Workers' Compensation lump sum settlement **before** you retire, and if you are able to continue working after you receive it, no offset will be made during the time that you were able to work prior to retirement. Deductions will **only** be made from your disability retirement allowance, **not** from your regular salary.

If you continue to work for a period of time, but subsequently must retire because of your disability, the deductions will begin with your first disability retirement allowance payment. In the example above, there would be an offset for the full lump sum amount if the lump sum was paid **after** retirement.

If a person continued to work for 20 months after receiving the lump sum, the deductions would only be made from the first 13 months (33 months total minus 20 months worked) of disability retirement allowance payments. No more deductions would be made after the 13-month period.

[SJMC 3.28.1040]

Exceptions to Workers' Compensation Offset

No offset is made for permanent disability payments if you receive a Workers' Compensation permanent disability rating of 100%.

[SJMC 3.28.1040(B)(5)]

The offset shall not apply if you receive Workers' Compensation benefits paid for any injury or illness which did not cause or contribute to the disability for which you received a service-connected disability.

[3.28.1040(B)(6)]

NONSERVICE-CONNECTED DISABILITY RETIREMENT ALLOWANCE



To qualify for nonservice-connected disability retirement, you must have five (5) years or more of retirement service credit.

[SJMC 3.28.1290]

Your monthly allowance will be calculated using the following formula:

**Years of Service x 2.5% x Final Compensation
minus Offset, if under age 55**

Before any offset for age, your base retirement allowance will be at least forty percent (40%), but not more than seventy-five percent (75%), of your final compensation.

Under Age 55 Offset

If you are under 55 years of age, the percentage of your final compensation (at least 40%) will be offset by one-half percent (0.5%) per year for each year (and/or fraction of years) that you are under age 55.

For example, if you were 50 years of age with 40% of your final compensation, you would receive 37.5% of your final compensation with the offset:

$$55 - 50 = 5 \text{ years} \quad 0.5\% \times 5 \text{ years} = 2.5\% \quad 40\% - 2.5\% = 37.5\%$$

[SJMC 3.28.1300]

Your benefit may be reduced if you receive earnings outside City employment. Please refer to Outside Earnings section beginning on the next page for further details.





OUTSIDE EARNINGS

Reporting Requirement

If you receive a disability retirement *prior to reaching age 55*, and you subsequently take another job, you may not receive a total income in excess of the current base salary of the position from which you retired.

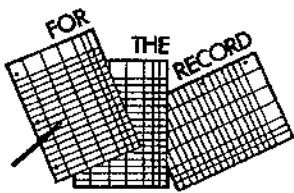
As a condition of receiving a monthly disability retirement allowance, you must submit written statements of your total income and earnings from employment outside City service during your disability retirement. These reports are required until you reach age 55.

You have two choices of how to report your outside earnings: monthly statements with an annual summary or annual reporting with a copy of your income tax returns.

Monthly Statements and Annual Summary

Within 10 days after the end of each month, you must file a monthly statement of your total income and earnings. In addition to the monthly reports, on or before May 1 of each year, you must file a **notarized** declaration under penalty of perjury of your total income and earnings received during the preceding year.

[SJMC 3.28.1325(B)(1)]



Annual Reporting with Income Tax Returns

Instead of the monthly statements described above, you may choose to submit a single report of your annual income and copies of your federal and state income tax returns, including your W-2 and/or 1099 forms showing your total income. The tax returns and forms must be submitted to the Retirement Department by May 1 for income earned in the previous year.

If you elect this option, you will also need to submit a written statement of your projected income and earnings by January 10th of each year. You may file an amended statement if there is a change in your projected income.

[SJMC 3.28.1325(B)(2)]



Termination of Benefits for Failure to File Reports

If you fail to report your income as described on the previous page, your disability retirement allowance will be discontinued until you submit the required reports.

When you submit the reports, you will receive any allowances that have been withheld, less any applicable deductions.

[SJMC 3.28.1325(D)]

Deductions for Earnings Outside of City Employment

If your disability retirement allowance plus your outside earnings exceed the current base salary of the position from which you retired, then your allowance will be reduced to the point where your total income equals that salary.

For example:

Current Monthly Salary of Former Position:	\$2,000
Retirement Allowance:	<u>-\$ 800</u>
Maximum Outside Earnings	\$1,200

In this example, if your outside earnings (as reported monthly or the monthly average from your annual projection if reported annually) are less than \$1,200, then the full retirement allowance will be paid. However, if outside earnings are more than \$1,200, then the retirement allowance will be reduced. If, for example, you earn \$1,500 in a given month, your allowance will be reduced as follows:

Outside Earnings:	\$1,500
Maximum Outside Earnings:	<u>\$1,200</u>
Offset:	\$ 300

In this example, the retirement allowance will be reduced by \$300, from \$800 to \$500.

If your outside income itself exceeds the current base salary of the position from which you retired, then you will still receive a check for \$1. You will also maintain benefits such as medical, dental, and life insurance.



If for any reason your allowance should have been offset and it was not, you are responsible for making up the overpayment. Any excess amount may be deducted from future allowance payments or may be collected from you directly.

Once you reach age 55, this offset is no longer applicable. At such time, you may receive your full disability retirement allowance without deductions for outside employment.

[SJMC 3.28.1330]

Note: If you are subject to a Workers' Compensation offset, the retirement allowance used in the above calculation will be the amount of your retirement allowance before the offset.



REEMPLOYMENT OF DISABILITY RETIREES (ALTERNATE EMPLOYMENT)

Alternate Employment (Reemployment) is a **voluntary** program designed to provide disabled City retirees with an opportunity to continue to work for the City in positions other than those for which they are incapacitated. You may participate in this program if:

- You have been granted a disability retirement
- You elect in writing the opportunity for reemployment
- You and the City agree, subject to civil service rules, regulations and requirements of the City, that you be reemployed in any position other than the position you held at retirement
- Based on medical and physical examination, you are not incapacitated for performance of the duties of the position to which you may be appointed

If you are reemployed, you will continue in disability retirement, but you will be reinstated to membership in the system and regain credit for those years of service you had prior to your disability retirement.

[SJMC 3.28.1441, 3.28.1442 & 3.28.1444]



Reemployment Disability Allowance

The reemployment program offers you the opportunity to earn the same compensation as the position you were in prior to your disability. Assume the salary of your position prior to disability retirement was \$3,000 per month, that the disability retirement allowance you currently receive is \$1,400 per month, and that your new position will pay \$2,000 per month. Your pay would be:

Reemployment Salary:	\$2,000
Disability Retirement Subsidy:	<u>1,000</u>
Monthly Income:	\$3,000 (Same as before disability)

You continue to make contributions to the retirement system from your reemployment salary while in the program.

In no event will the retirement system subsidy exceed the total retirement allowance, including cost-of-living increases, to which you are entitled due to your disability retirement. If the pay in your new position is equal to or more than the base pay of your old position, then you will not receive any retirement allowance. [SJMC 3.28.1443]

Disability During Reemployment (Alternate Employment)

If you again become disabled and can no longer perform the duties of your reemployment position, you have two options:

- You may resign and keep your original disability retirement allowance
- You may apply for a new disability retirement within 30 days of ceasing work in your reemployment position

If the Board finds that you are disabled from your new position, your new allowance will be based on:

- Your total years of service
- Your final compensation in your reemployment position at the time you become disabled in that position



- Whether or not the disability is service-connected

This new allowance supersedes your original disability retirement allowance.
[SJMC 3.28.1449.3]

Death Before Retirement from Reemployment (Alternate Employment)

If you die after being reemployed under the reemployment program, but before retiring from reemployment, your survivors will be eligible for the benefits they would receive as survivors of an active City employee.

[SJMC 3.28.1449.13]

Retirement from Reemployment (Alternate Employment)

You may resign from your Alternate Employment position at any time and keep your original disability retirement allowance, or you may continue in your Alternate Employment position until:

- You become permanently disabled and can no longer perform the duties of your Alternate Employment position
- You reach age 55 and are eligible for a service retirement

After age 55 your options are:

- You may resign and keep your original disability retirement allowance
- You may apply to the Retirement Board for a service retirement. Your retirement allowance would be based on your total years of service before your disability, plus your Alternate Employment years.

Under no circumstances will you be entitled to receive more than one retirement allowance.

[SJMC 3.28.1449.11-12]



REEMPLOYMENT INTO NON-FEDERATED POSITION



If you are a disability retiree under age 55, you may be reemployed by the City, *at the City's discretion*, in a position that does not qualify for membership in the Federated Retirement System as long as you are not incapacitated for the duties of the new position. (Some part-time positions are examples of non-federated positions.) You will continue to receive your retirement allowance, except that **you may not receive compensation in excess of the current base salary of the position from which you retired.**

Therefore, during the time you are reemployed in a position where the pay is less than you were earning when retired, you will receive:

- The compensation of your reemployment position; plus
- A disability retirement allowance that, when added to your reemployment position compensation, does not exceed the current base salary of the position from which you retired.

[SJMC 3.28.1340]

REINSTATEMENT TO DUTY AFTER DISABILITY RETIREMENT



Permanent Disability After Age 55

If at age 55 you are still incapacitated to perform the duties of the position you held at the time of your disability retirement, and of any other position in the same classification of positions, you will be deemed permanently disabled. This means that you no longer will be subject to recall to duty, and your disability retirement allowance may not be canceled.

[SJMC 3.28.1400]





Medical Exam During Disability Retirement

Once you have received a disability retirement, the Retirement Board may at any time require you to undergo a medical examination to determine the status of your disability.

[SJMC 3.28.1370]

Reinstatement to Duty

If the Retirement Board determines that you have become capable of performing the duties of your position, and you are under age 55, you will be subject to reinstatement to duty. Once reinstated, you will again become a member of the system and will be entitled to credit for past service as if you had never retired.

[SJMC 3.28.1380 and 3.28.1446]

Disability Retirement Allowance until Reinstatement

If the Board determines that you are no longer disabled, you will continue to receive your disability retirement allowance until the City reinstates you, or until:

- You reject an offer of reinstatement into your previous position or a position in the same classification
- You refuse or fail to report to work in your previous position or a position in the same classification when requested to do so
- You become unable to accept reinstatement into or again become unable to perform the duties of your previous position, or a position in the same classification

[SJMC 3.28.1440]

Refusal To Accept Reinstatement

If you are receiving a disability retirement allowance, are subsequently found to be capable of performing the duties of your position, and are offered reinstatement, you must accept reinstatement and report for duty. If you fail to do so, all of your rights and benefits, and your survivors' rights and benefits, will be terminated.

[SJMC 3.28.1390]

Failure or Refusal to Submit to Medical Examination

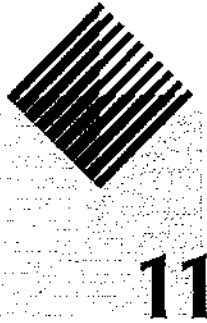
If you fail or refuse to undergo any medical exam that is required by the Retirement Board while you are receiving a disability retirement allowance, the Board may terminate your allowance. If your allowance is terminated, you will no longer have any right to reinstatement to duty, nor will you or any of your survivors be entitled to any allowances or benefits of this system.

However, if you apply for reinstatement of your disability retirement within one year of the termination of your allowance, and can prove that you are still disabled, the Board may reinstate your disability retirement and your allowance as of the date decided by the Board.

If you die before having your disability retirement and your allowance reinstated, your surviving spouse or surviving children may apply to the Retirement Board for survivorship benefits or death benefits. If they can prove that your disability continued until your death, the Board may grant them survivorship or death benefits to which they would have been entitled if your disability retirement had not been terminated. They must apply for these benefits **within one year from the date the Board terminated your disability retirement**. No survivorship allowances or death benefits will be granted to anyone unless an application is made within this one-year period.

[SJMC 3.28.1410]





11

MEDICAL AND DENTAL BENEFITS

This chapter describes medical and dental benefits for service and disability retirees and their survivors. It also describes the eligibility requirements for survivors of members who died prior to retirement.



MEDICAL BENEFITS

Medical Insurance Coverage for Retirees

You may be entitled to medical insurance coverage after retirement if you meet the following qualifications:



- You are retired for service or disability
- You are entitled to credit for 15 or more years of service or you receive an allowance that is equal to at least 37.5% of your final compensation
- You apply for medical insurance coverage at the time of your retirement and agree to pay any applicable premiums

Note: If you have a disability retirement that is being offset due to Workers' Compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.

[SJMC 3.28.1950(A) and 3.28.1970(A)]



Medical Insurance Coverage for Spouse

Your spouse is eligible for medical insurance only if you were married to that spouse at the time of your retirement.

[SJMC 3.28.1970(C)]



(enrolled) = retired disability

Medical Insurance Coverage for Survivors

Your surviving spouse or children may be eligible for medical insurance coverage if the following qualifications are met:

- You died before retiring, or were retired for service or disability
- At the time of your death, you were entitled to credit for 15 or more years of service or were receiving an allowance that is equal to at least 37.5% of your final compensation
- Your survivor receives a monthly survivorship allowance due to death during your employment with the City or after retirement
- At the time of your death, you *and* your survivor were enrolled in one of the City sponsored medical insurance plans
- Your survivor applies to continue medical insurance coverage at the time of your death
- Your survivor agrees to pay any applicable premiums for this coverage

Note: If, at the time of your death, you were receiving a disability retirement that was being offset due to Workers' Compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.

[SJMC 3.28.1960 and 3.28.1970(B)]

Single Coverage Only for Surviving Spouse

Generally, a surviving spouse is eligible only for single coverage. However, if you have at least one surviving child, or if your spouse has at least one unmarried minor child, and the child was enrolled in a medical insurance plan sponsored by the City at the time of your death, then your surviving spouse will be eligible for family coverage.

[SJMC 3.28.1970(C)]



Medical Insurance Premiums

The retirement system pays 100% of the premium for the lowest cost plan available to active City employees. If you or your survivors select a plan other than the lowest cost plan, then you or your survivors must pay the difference between the premium for the selected plan and the lowest cost plan. Premium payments are deducted from your (or your survivor's) retirement allowance.

[SJMC 3.28.1980]



DENTAL BENEFITS

Dental Insurance for Retirees

You may be entitled to dental insurance coverage after retirement if you meet the following qualifications:



- You retire directly from City service
- At the time of your retirement, you are enrolled in one of the dental insurance plans sponsored by the City
- You are entitled to credit for 5 or more years of service or you receive an allowance that is equal to at least 37.5% of your final compensation

Note: Members who leave City service *prior* to retirement (“deferred vested” members) are not eligible for dental insurance.

Note: If you have a disability retirement that is being offset due to Workers’ Compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance *before* the offset.

[SJMC 3.28.2000 and 3.28.2020]

Dental Insurance Coverage for Survivors

Your surviving spouse or children may be eligible for dental insurance coverage if they meet the following requirements:

- You died before retiring, or were retired for service or disability
- At the time of your death, you were entitled to credit for 5 or more years of service or were receiving an allowance that is equal to at least 37.5% of your final compensation
- Your survivor receives a monthly survivorship allowance due to death during your employment with the City or after retirement directly from active City service
- At the time of your death, you *and* your survivor were enrolled in one of the City sponsored dental insurance plans

Note: If, at the time of your death, you were receiving a disability retirement that was being offset due to Workers' Compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.

[SJMC 3.28.2010 and 3.28.2020(B)]

Dental Insurance Premiums

The Retirement System pays 100% of the dental insurance premiums.

[SJMC 3.28.2030]

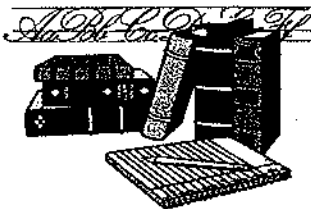




12

SURVIVING CHILD'S SCHOOL ALLOWANCE

Upon your death, your eligible minor children may receive a survivorship allowance until they reach the age of 18 as described in the applicable chapters of this handbook. After age 18, your surviving children may still be eligible to receive an allowance if they meet the following conditions:

- 
- Must have reached the age of 18
 - Must not have reached the age of 22
 - Must be unmarried
 - Must be a full-time student at a qualifying educational institution

[SJMC 3.28.1750(B)]

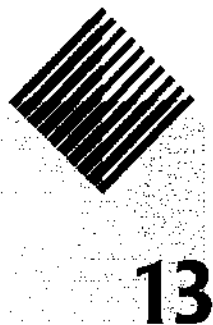
Definition of Full-Time Student

The student must be enrolled in a junior college, college, or university in a day or evening noncorrespondence course that is at least 13 weeks long and is full-time under the school's standards and practices for day students. The student may also qualify if enrolled in any other educational institution in a day or evening noncorrespondence course that is at least 13 weeks long and is full-time under the school's standards and practices for day students with scheduled attendance of at least 20 hours per week.

The 13 week requirement refers to the entire course of study and not a semester, quarter, or summer school session. For example, a two-year junior college course qualifies even though any particular session lasts less than 13 weeks.

A student will not be considered a full-time student if he or she is paid by his or her employer for attending an educational institution if required by the employer or at the employer's request.

[SJMC 3.28.1750(C) and 3.28.1750(D)]



13

COST-OF-LIVING ADJUSTMENTS



After receiving a retirement or survivorship allowance for one year, you are eligible for cost-of-living adjustments. On April 1 of every year, your retirement allowance or your survivorship allowance will be adjusted to reflect changes in the Consumer Price Index (CPI). The resulting adjustment will remain in effect until March 31 of the following year.

No matter what the "official" cost-of-living change is, no allowance will be increased more than 3 percent over, or decreased more than 3 percent below, the allowance paid during the previous year (April 1 to March 31).

Cost-Of-Living Adjustment Eligibility

To receive an allowance increase or decrease on April 1, you must:

- Have been receiving a retirement allowance for at least one full year; or
- Have been the survivor of an active employee for at least one full year; or
- Have been the survivor of an eligible retiree who died at least one full year earlier.

If you retire part way through the year (**between April 1 and March 31**), your first retirement allowance cost-of-living adjustment will begin on the first day of the month **following** the one year anniversary of your retirement. The adjustment will be prorated for the number of months remaining until the following April. Adjustments occur on April 1. (See the example on page 65.)

If you die part way through the year (**between April 1 and March 31**), the cost-of-living adjustment in your survivors' allowance(s) will begin on the first day of the month **following** the one year anniversary of your death. The adjustment will be prorated for the number of months remaining until the following April. Adjustments occur on April 1. (See the example on page 65.)



Determination of Cost-of-Living Adjustment

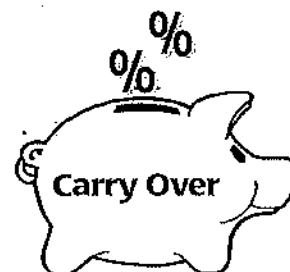
Before each April 1, the Retirement Board will determine the cost-of-living increase or decrease for the previous calendar year. To determine the amount of this adjustment, the Board will use the most current December-to-December change in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland Metropolitan Area, published by the U.S. Department of Labor's Bureau of Labor Statistics.

This cost-of-living adjustment (subject to the 3 percent limitation) above or below the previous year's CPI, will be applied to all eligible retirement allowance payments for the period beginning on April 1 and will continue through the following March 31.

3%

If the CPI increase exceeds 3 percent, the excess percentage will be accumulated from year to year in your "carry-over" account. (Only percentage points are tracked in the "carry-over" account, not actual money.) In years when the CPI increase is less than 3 percent, the Retirement Department will use your "carry-over" percentage points, if any, to raise your cost-of-living adjustment up to 3 percent.

[SJMC 3.44.040]



Limitations on Decreases in Allowance

No cost-of-living decrease will reduce your retirement or survivorship allowance below the amount to which you or your survivors were originally entitled.

[SJMC 3.44.080]



Example of Cost-of-Living Calculation

1. You retire on June 10, 1997. For the purposes of this example, assume your retirement allowance is \$3,000 per month.
2. Assume the CPI for December 1996 shows a 3.5% cost-of-living increase and that the CPI for December 1997 shows a 5.5% cost-of-living increase. The difference between December 1997 and December 1996 is 2%.
3. From June 10, 1997 - June 30, 1998, your retirement allowance will remain \$3,000 per month.
4. Starting in July 1998, the first month following one year of retirement, you will receive your first cost-of-living adjustment in addition to your allowance.
5. Because you retired **after** March 31, 1997, you are eligible for a partial year of cost-of-living adjustment benefits for the period July 1998 through March 1999 (9/12, or 75% of the year).

$$2\% \times .75 = 1.5\%$$

$$\$3,000 \times 1.5\% \text{ (cost-of-living increase)} = \$45.00$$

$$\text{Your retirement allowance will become } \$3,000 + \$45.00 = \$3,045.00$$

6. Assume the cost-of-living increase from December 1997 to December 1998 is 4%.
7. As of April 1, 1999, you will receive the full 3% increase and 1% will be added to your "carry-over" account.

$$\$3,045.00 \times 3\% = \$91.35$$

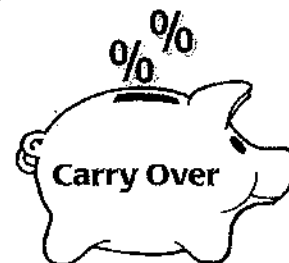
$$\$3,045.00 + \$91.35 = \$3,136.35$$

$$\text{Your allowance will then be } \$3,136.35 \text{ per month.}$$

From then on, you are eligible for the full amount of cost-of-living increases (or decreases) that take effect each April 1. These increases (or decreases) are based on your original retirement allowance plus whatever cost-of-living adjustments have been made in prior years. In this example, your next cost-of-living adjustment would be made to your new retirement allowance of \$3,136.35 per month.

"Carry-Over" Accounts

Changes in the Consumer Price Index may be greater than the 3 percent increase and decrease allowed by the Federated City Employees' Retirement System. For this reason, members are allowed to accumulate any cost-of-living percentage increases above the maximum 3 percent paid by the system. No actual money is kept in the "carry-over" account. It is only a method to track excess percentage points.



The percentage points in your "carry-over" account, if any, will be used to make your cost-of-living increase 3 percent in years when the actual cost-of-living index increases by less than 3 percent.

For example, if the cost-of-living index rose 4 percent in one year, you would receive the system's maximum 3 percent increase, and 1 percent would be added to your "carry-over" account.

	<u>Index Increase</u>	<u>Plan Pays</u>	<u>Add to "Carry-over"</u>	<u>"Carry-over" Account Balance</u>
Year 1	4%	3%	1%	1%
Year 2	5%	3%	2%	3%
Year 3	1 1/2%	3%	(2 1/2%)	1 1/2%
Year 4	2%	2 1/2%	0%	0%

In no case will members have a negative balance in their "carry-over" account. You cannot draw a larger percent than is available in your "carry-over" account. (See example in Year 4.) This process is done automatically by the Retirement Department. There is no need to request deductions from your "carry-over" account.



There are two types of disability retirements:

Service-Connected Disability

Your disability is considered service-connected if it results from injury or disease arising out of and in the course of City employment while a member of the Retirement System.

[SJMC 3.28.1210(C)]

Nonservice-Connected Disability

Your disability is nonservice-connected if it is **not** job related.

[SJMC 3.28.1210(B)]

DISABILITY RETIREMENT BENEFIT CHART

Retirement Type	Minimum Service	Benefit
Service-connected Disability [SJMC 3.28.1280]	None	2.5% of final compensation for each year of service, but not less than 40% nor more than 75% of final compensation.
Nonservice-connected Disability [SJMC 3.28.1290]	5 years	Same formula as above. If under age 55, subtract 0.5% for each year between age at retirement and age 55.



Members Are Not Eligible to Receive Both Service and Disability Retirement Benefits

In no case may you receive both service retirement and disability retirement benefits.

[SJMC 3.28.1360]

Disability Allowance Versus Contributions

Your disability benefits are not restricted to the amount of your contributions. However, the amount that you have received as a disability allowance will be deducted from your accumulated contributions. This provision may be important if you or your estate at some point becomes eligible for a return of your contributions.

[SJMC 3.28.1430]

Application

If you are eligible for a disability retirement, the Retirement Board may in some cases grant you a disability retirement without any request or application being made. An application for a disability retirement may be made by:

- You
- Someone authorized to apply for you on your behalf
- The head of your department
- The City Manager
- The Retirement Board

[SJMC 3.28.1220 & 1230]

It takes approximately four (4) to five (5) months to process a disability retirement application. If you are disabled, the sooner you submit an application, the sooner the Retirement Board will be able to make a decision. You should submit your own doctor's medical report(s) along with the application.

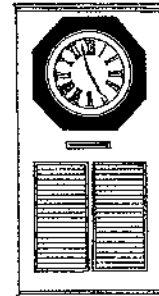


Time Limits for Disability Retirements

The Retirement Board may only grant a disability retirement during one of the following time frames: ① Must apply for SCD w/in 4 mos of terminating City

- While you are still employed by the City and a member of the Retirement System
- Within four (4) months of discontinuing City service - onset of dis w/in 4 mos,
- During the continuance of your disability, if it continues after you have stopped working - If you leave w/ a disability, can come back at any time w/ application for SCD.

[SJMC 3.28.1240]



How are col applied to - ODRB
- not emp.

On leave thru work comp → SCD, comp, vac → Termination

- If not working while on dis app. status, and dept can accommodate perm work restrictions, applicant does not receive dis ret nor can they go back to work.

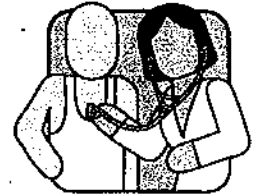


Summary of the Disability Retirement Process

- Step 1:** You submit a retirement application to the Retirement Department. You should include copies of your own doctor's medical reports, if any.
- Step 2:** The Retirement Department sends a letter to you and your Department Head advising you of the approximate Board hearing date and the name of the assigned Retirement Department staff member.
- Step 3:** The Retirement Department sends a letter to Risk Management requesting copies of medical records relating to the basis for a disability retirement. (If your application is for a nonservice-connected disability, the request for medical records is sent to Employee Health Services.)
- Step 4:** The Retirement Department sends a copy of your application and medical records to the Retirement Board's Medical Director.
- Step 5:** Medical examinations are scheduled at the discretion of the Retirement Board's Medical Director.
- Step 6:** When the report from the Retirement Medical Director is received, the Retirement Department sends the list of any work restrictions to your department requesting a determination if modified duty is available.
- Step 7:** If you qualify for Reemployment (Alternate Employment), the Retirement Department sends the Medical Director's list of work restrictions and a work application to Human Resources to determine if there are suitable positions available.
- Step 8:** When all reports and memos are received, the Retirement Department places your application on the Retirement Board's agenda.
- Step 9:** Prior to the Retirement Board agenda date, a Disability Hearing is held by the Disability Retirement Hearing Committee to provide a recommendation to the Board.
- Step 10:** The applicant meets with the Retirement Department staff member to answer questions and to fill out necessary forms. We strongly encourage you to bring your spouse or significant other to this meeting.
- Step 11:** The Retirement Board hears the application at the Board meeting. If your disability application is approved by the Board, your retirement is normally effective on that day.

Medical Examination

After you complete your disability retirement application, a copy of it and copies of medical reports submitted by you or received from Risk Management or Employee Health Services will be sent to the Retirement Board's Medical Director. You may be sent to independent doctors for evaluation of your condition to determine whether you are disabled.



After this evaluation, the Medical Director will review your application and your own doctor's report(s) together with the independent doctors' medical reports. The Medical Director will then submit a report to the Retirement Board in order to assist them in their decision as to whether or not you are disabled.

If the Board feels it needs additional information to make a decision regarding your disability, it may request a review panel of up to three doctors from a list submitted by the Santa Clara County Medical Society. The Board has the sole authority to determine whether or not it needs a review panel to assist it in its decision.

The Retirement Board will make the final decision at the Board meeting as to whether or not you are disabled and whether or not your disability is work related. If the Board is satisfied that you meet the eligibility requirements, they may grant your retirement and you may receive a disability retirement allowance. Your retirement is usually effective as of the day of the Board approval.

[3.28.1250 - 1260]





WORKERS' COMPENSATION OFFSET

If you receive a service-connected disability retirement and also receive Workers' Compensation payments due to the same disability, your disability retirement allowance will be reduced. The Workers' Compensation benefits that result in a reduction of your retirement allowance are benefits for temporary disability, permanent disability or vocational rehabilitation.

There is a limitation on the amount of money that can be reduced. Under California Labor Code 3751(a) an employer is permitted only a partial credit of the Workers' Compensation benefit against the retirement allowance. The credit bears the same ratio to the Workers' Compensation liability as the City's contributions to the plan bears to the total contributions.

To determine the amount of the credit, the offset ratio is calculated for the employee as follows:

$$\text{Offset ratio} = \frac{\text{Employer contributions made during member's employment}}{\text{Employer and employee contributions made during the member's employment}}$$

The offset ratio is then multiplied by the Workers' Compensation monthly benefit to determine the amount of the credit.

Example:

Retirement allowance = \$1,000

Offset ratio = 69.70%

Workers' Compensation award = \$140 weekly

The monthly equivalent of the Workers' Compensation award is:

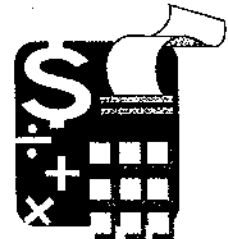
$$\$140 \times 52 \text{ weeks} / 12 \text{ months} = \$606.67$$



In this example, the offset would be:

$$\$606.67 \times 69.70\% \text{ (offset ratio)} = \$422.84 \text{ per month.}$$

Retirement allowance:	\$1000.00
Workers offset amount:	<u>-\$422.84</u>
New retirement allowance:	\$577.16



Amount retiree would receive from the Department of Retirement:	\$577.16
Amount retiree is receiving from Workers Compensation:	<u>+\$606.67</u>
Total amount to retiree:	\$1,183.83

Maximum Offset:

The offset cannot exceed the amount that is equivalent to the member's retirement benefit multiplied by the applicable ratio.

Workers' Compensation Offset - Lump Sum Payment

If you receive a lump sum payment from Workers' Compensation rather than weekly payments, this system will divide your lump sum (excluding payments for medical treatment) over the number of months it covers and make monthly deductions from your retirement allowance.

If, for example, **after you retire**, you receive a lump sum payment of \$20,000 and you would have received \$140 per week (\$606.67 per month) if you had been paid in periodic payments, then your \$20,000 would be divided by \$606.67 per month to determine the number of months for which there would be an offset of your disability retirement allowance:

$$\$20,000 / 606.67 = 33 \text{ months}$$

Example:

Workers Compensation lump sum award	\$20,000
Offset ratio	69.70%
Retirement allowance	\$1,000

Total offset would be \$20,000 X 69.70% = \$13,940.00



EXHIBIT 8

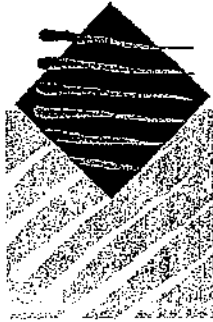


TABLE OF CONTENTS

Chapter

1	Introduction	1
2	System Management	3
	Board of Administration	3
	Actuarial Investigations	4
	Board Meetings and Hearings	4
3	Membership	5
	Eligible and Ineligible Employees	5
	Special Membership Qualifications	6
	Termination of Membership	7
	Members' Responsibilities	7
4	Contributions	9
	Contribution Rates	9
	Social Security and Medicare	10
	Tax Treatment of Contributions	10
	Contributions During Military Service	10
	Contributions During Absence Due to Service-Connected Injury	11
	Transfer of Contributions to Police & Fire Department Retirement Plan	11
	Withdrawal of Contributions	11
5	Benefit Eligibility Requirements	13



6	Separation From City Service Prior to Retirement	15
	Options at Time of Separation	15
	Return of Contributions	17
	Right to Redeposit Withdrawn Contributions	
	Upon Return to City Employment	18
	Special Purchase of Prior Service	19
	Right to Request Return of Contributions	20
7	Service Retirement	21
	Eligibility Requirements	21
	Computation of Service Retirement Allowance	22
	Returning to City Employment After Service Retirement	23
8	Disability Retirement	25
	Disability Benefit Chart	26
	Summary of Disability Retirement Process	28
	Medical Examination	29
	Service-Connected Disability Retirement Allowance	29
	Workers' Compensation Offset	29
	Nonservice-Connected Disability Retirement Allowance	33
	Outside Earnings	34
	Reemployment of Disability Retirees	
	(Alternate Employment)	36
	Reemployment into Non-Federated Position	38
	Reinstatement to Duty After Disability Retirement	39
9	Death After Retirement	41
	Death After Retirement with Less than 5 Years	
	of Service Credit	41
	Death After Retirement with More than 5 years	
	of Service Credit	42
	Special Death Benefit	44
	Optional Survivorship Allowances	44



10 Death Before Retirement	47
Nonservice-Connected Death with Less than 5 Years of Service Credit	47
More than 5 Years of Service or Service-Connected Death	48
11 Medical and Dental Benefits	53
Medical Insurance Eligibility Requirements for Retirees	53
Medical Insurance for Survivors	54
Dental Insurance Eligibility Requirements for Retirees	55
Dental Insurance for Survivors	56
12 Surviving Child's School Allowance	57
13 Cost-of-Living Adjustments	61
14 Reciprocity	65
Summary	65
General Eligibility Requirements	66
Use of Final Average Salary from Reciprocal System	67
Combining Service in Reciprocal System to Meet Minimum Service Requirements	68
Reciprocal Benefit when Member Receives Disability Allowance from a Reciprocal System	69
Survivorship or Death Benefits when Member Dies as a Member of a Reciprocal System	69
Special Redeposit Provisions	70
Electing Reciprocity	70
15 IRS Limits	71
16 Glossary	73





INTRODUCTION

This handbook has been prepared to inform you of the benefits available under the Federated City Employees' Retirement System. The current plan became effective on July 1, 1975, and it covers all full-time and some qualified part-time employees. (There is a separate retirement plan for public safety officers.) It provides employees of the City of San José with benefits upon retirement and may provide benefits to survivors after death.

You may be entitled to some or all of the following retirement benefits:

- ξ Monthly payments for the rest of your life
- ξ Monthly payments for your surviving spouse
- ξ Monthly payments to your surviving children until age 18, or 22 if they are full-time students
- ξ Monthly payments for life if you become totally disabled
- ξ Lump sum payment to your survivors or to your estate
- ξ Medical benefits
- ξ Dental benefits
- ξ Return of your contributions if you leave City employment without retiring

Complete details of the retirement system can be found in Chapters 3.28, 3.43, and 3.44 of the San José Municipal Code. This handbook is a summary of those chapters of the Code. Code references are made at the end of appropriate passages. **IF THERE IS ANY DISCREPANCY OR CONFUSION BETWEEN THE INFORMATION IN THIS HANDBOOK AND THE INFORMATION IN THE CODE, THE CODE WILL PREVAIL.**



Your retirement benefits are subject to the meet and confer process under the Meyers-Milias-Brown Act, which requires employers to meet with employees to confer about changes in wages, hours, or terms and conditions of employment. Proposed changes in retirement benefits are discussed during negotiations between City representatives and representatives of the recognized employee bargaining organizations.

Please contact the Retirement Staff if you have any questions regarding your retirement benefits. We are here to help! The Retirement Staff is located at:

DEPARTMENT OF RETIREMENT SERVICES

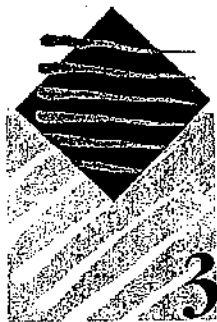
777 North First Street, Suite 750

San José, California 95112

(408) 277-5137

(800) 732-6477





MEMBERSHIP

ELIGIBLE EMPLOYEES

As soon as you become a full-time City employee, you are automatically a member of the retirement system. New members must fill out a beneficiary designation form.

INELIGIBLE EMPLOYEES

The following classes of employees are not qualified for membership in the retirement system:

- ξ Mayor
- ξ City Council members
- ξ Elected or appointed members of any City board or commission
- ξ Actively employed, current members of any other retirement or pension system supported by any federal, state or local government or government agency
- ξ Persons employed to perform services required because of an emergency
- ξ Persons employed in relief or anti-poverty programs
- ξ Police and Firefighter recruits
- ξ Temporary employees
- ξ Contract employees
- ξ Volunteer workers
- ξ Emergency appointees in time of war or national emergency
- ξ Persons hired as part-time employees on or after July 1, 1975
- ξ Persons covered by the Police & Fire Department Retirement Plan

[SJMC 3.28.460 - 560, 3.28.620]



SPECIAL MEMBERSHIP QUALIFICATIONS

Former Chapter 3.24 Members

The retirement system before July 1, 1975, is called the Chapter 3.24 system. If you were a member of the Chapter 3.24 system, you could have become a member of this, the Chapter 3.28 system, in a number of ways:

- § If you were a City employee and a member of the old Chapter 3.24 retirement system on June 30, 1975, and were still employed in your same position on July 1, 1975, you automatically became a member of this Chapter 3.28 system on July 1, 1975. [SJMC 3.28.1150]
- § If you retired under Chapter 3.24 and were reinstated into City service after July 1, 1975, your Chapter 3.24 retirement allowance and benefits were canceled, and you became a member of this system. [SJMC 3.28.410, 420]
- § If you left City service, retained membership in the Chapter 3.24 system after June 30, 1975, and then reentered City service, you became a member of the Chapter 3.28 system, and your membership in the Chapter 3.24 system was automatically terminated.

[SJMC 3.28.430]

Once you became a member of this system, all of your rights under the Chapter 3.24 system were terminated, and you were provided with the rights and benefits of this Chapter 3.28 system.

[SJMC 3.28.400]

Former Employees of City Health Department or Communications Division

If you are employed in the communications division or were an employee of the City Health Department as of July 1, 1968, special provisions may apply. Please contact the Retirement Department for more information.

Part-time Employees

Part-time employees are eligible to join the retirement system only under the following conditions:

- § If you were originally hired as a full-time employee and became a member of the system, and later become a part-time employee without a break in service. [SJMC 3.28.560]
- § If you were a member of the Chapter 3.24 (pre-1975) retirement system, you automatically became a member of this system on the day it took effect, July 1, 1975.

[SJMC 3.28.400]

- § If you were not a member of the Chapter 3.24 retirement system, but you took advantage of the one-time option of becoming a member of this retirement system by filing a written statement with the Retirement Board by August 31, 1975 electing to do so.

TERMINATION OF MEMBERSHIP

Membership in the retirement system lasts until:

- § Death before retirement
 - § Retirement
 - § Resignation, discharge or layoff from City service
 - § A leave of absence found by the Retirement Board to have resulted in permanent discontinuance of service
- [SJMC 3.28.570]

Persons leaving City service with at least 5 years of service credit, or persons who qualify for reciprocity described in Chapter 14, may elect to remain members of the retirement system.

MEMBERS' RESPONSIBILITIES

Change of Name/Address

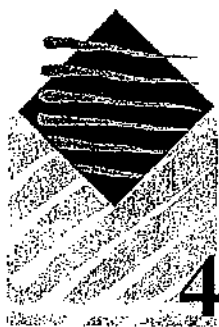
Active members must fill out a "Request for Change of Name and/or Address" (Form 190-22) whenever you or your dependents change names or addresses, and submit the form to the Human Resources Department (City Hall, Room 207). Retirees and former employees who have retirement contributions on deposit should notify the Department of Retirement Services in writing of such changes.

Change of Status/Beneficiaries

If any change takes place in your personal life (such as marriage, divorce, adoption, birth or death in the family), be sure to provide copies of the appropriate documents. If necessary, you should also update your beneficiary designations at this time. In case of divorce, you will need to provide a copy of the divorce stipulation.

Active employees should submit information regarding changes of status and beneficiaries to the Human Resources Department. Retirees and former members who left their contributions on deposit should notify the Department of Retirement Services of any changes. Notification should be given within 30 days of the event.





CONTRIBUTIONS

Both you and the City make contributions to the retirement system. The contribution rates are the percentages of your salary that you and the City each pay into the retirement system. Your contributions are made through payroll deductions. The Retirement Board sets, and from time to time, changes the rates of contribution necessary to make the retirement system actuarially sound. This ensures that the retirement system will have sufficient funds to provide for your retirement benefits. The Board's determination is based on actuarial studies of the retirement fund's projected benefit costs and expected fund earnings. Contribution rates are changed after periodic actuarial reviews. The Board makes a recommendation to the City Council regarding contribution rates.

The contribution ratio is the ratio between the portion of total contributions the City pays and the portion of contributions you pay. The contribution ratio for the normal costs of the plan is eight to three: for every \$8.00 paid by the City, you pay \$3.00. Other contributions, such as contributions attributable to cost-of-living adjustments, prior service, and health insurance, have their own contribution ratios.
[SJMC 3.28.700-720 & 3.28.860]

RECORD OF CONTRIBUTIONS

Although all contributions to the retirement system are kept together in the retirement fund, a record is kept of your contributions, and your contributions are credited to your individual "account". Your "accumulated contributions" represents the total of all your contributions to the retirement system.
[SJMC 3.28.770]

You will receive an annual notice documenting your retirement service credit, your contributions to the plan, and interest earned on your contributions.



SOCIAL SECURITY

City employees do not contribute to the Social Security system and do not receive Social Security credit for their City service. You may still be eligible for Social Security benefits if you were previously employed by some other institution or company that did contribute to Social Security. However, if you receive a government pension such as one from the City of San José, your Social Security benefit may be reduced. Contact your local Social Security office to find out whether or not you are eligible for benefits.

MEDICARE

The Medicare portion of Social Security (FICA) tax is withheld from payroll checks of employees hired after March 31, 1986. Please call your local Social Security office if you have any questions concerning Medicare benefits.

TAX TREATMENT OF CONTRIBUTIONS

Starting in April 1987, your contributions to the retirement plan are paid with pre-tax dollars, reducing your taxable income. Prior to April 1987, your contributions were paid into the plan with after-tax dollars. Because they were made with after-tax dollars, contributions made to the retirement plan before April 1987 will not be subject to additional taxation when they are withdrawn. If you receive a retirement allowance, the after-tax contributions you made prior to April 1987 are prorated over your life expectancy as a tax-free portion of your pension.

[SJMC 3.28.765]

CONTRIBUTIONS DURING MILITARY SERVICE

If you take a leave of absence without pay, in order to serve in the military during a time of war or national emergency, or if you are drafted in peacetime, the City will make its contributions, plus the contributions you would have been making if you were not on leave, into the retirement system on your behalf when you return to City service. The contributions made by the City will be for the time period that you are on leave. You must return to City employment within six (6) months of the end of your military service to receive this benefit.

If you are absent on military service, you may request a return of your contributions. However, this would terminate your membership in the retirement system, and neither you nor your spouse or children would have any rights under the retirement system.

[SJMC 3.28.630]



CONTRIBUTIONS DURING ABSENCE DUE TO SERVICE-CONNECTED INJURY

If you are absent from City service due to an injury or illness that is determined to have arisen out of and in the course of your employment, and you are not receiving pay during your absence, you have the option of contributing the same amount of contributions that you would have contributed if you were working during that period. You will then be given retirement service credit for that time. If you do not make the retirement contributions during an absence, that time will still count towards meeting any minimum service requirements for benefits. That time, however, will not count towards the calculation of your benefits. This benefit does not apply to part-time employees. [SJMC 3.28.640]

TRANSFER OF CONTRIBUTIONS TO THE POLICE & FIRE DEPARTMENT RETIREMENT PLAN

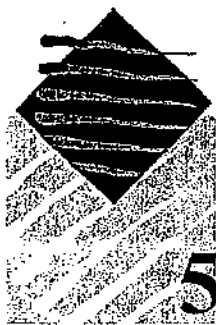
If you terminate your position that qualifies you for membership in this retirement system and immediately take a position that qualifies you for membership in the Police & Fire Department Retirement Plan, you may elect to transfer your service credit from this retirement plan to the Police & Fire Department Retirement Plan. You must elect this option within 90 days of becoming a member of the Police & Fire Plan.

If you elect this option, you must pay into the Police & Fire Plan an amount of money equal to what your Police & Fire account would have been had you been a member of the Police & Fire Plan during all of your service in the Federated System. You may transfer your accumulated contributions from this system to the Police & Fire Plan to make this payment. Contact the Retirement Staff for more information. [SJMC 3.36.610(D)]

WITHDRAWAL OF CONTRIBUTIONS

You may not withdraw your contributions from the retirement system unless your membership in the system is terminated. Termination of your membership may be as a result of voluntary resignation, termination, or death.





BENEFIT ELIGIBILITY REQUIREMENTS

You become eligible to apply for benefits according to the following schedule:

<u>Benefit</u>	<u>Minimum Age</u>	<u>Minimum Service</u>
Service Retirement (Please refer to Chapter 7.)	None	30 years
Service Retirement (Please refer to Chapter 7.)	55	5 years
If you separate from City service, you may leave your contributions on deposit and apply for a retirement allowance at age 55. (Please refer to Chapter 6.)	None	5 years
If you separate from City service and meet qualifications for reciprocity, you can leave your contributions on deposit and apply for a retirement allowance when eligible. (Please refer to Chapter 14.)	None	None
Service-connected Disability (Please refer to Chapter 8.)	None	None
Nonservice-connected Disability. (Please refer to Chapter 8.)	None	5 years





SEPARATION FROM CITY SERVICE PRIOR TO RETIREMENT

OPTIONS AT TIME OF SEPARATION

If you separate from City service before retirement, your options and possible benefits depend, in part, on your years of retirement service credit.

Fewer than Five (5) Years of Service

If you have fewer than five (5) years of service, all of your contributions to the plan, plus interest on your contributions will be returned to you. You do not have the option of leaving your contributions in the retirement system. You, your survivor, or your estate will not be entitled to any other benefit under the retirement plan.

[SJMC 3.28.590]

Fewer than Five (5) Years of Service - Reciprocity

You may be eligible to leave your contributions on deposit, even if you have fewer than five (5) years of service if you leave City employment, but continue in public service in California. You must meet several requirements explained in Chapter 14.

[3.28.2420(A)]

Five (5) or More Years of Service

If you leave City employment after five or more years of service:

§ You may request a return of your contributions.

-Or-

§ You may elect to continue membership in this system by leaving your contributions in the retirement fund. You can then apply for a service retirement allowance when you turn 55.



You must elect your option by notifying the Retirement Board in writing on a form furnished by the Retirement Department. This form must be returned no later than 90 days after the date notice is mailed to you. If you have less than 20 years of service credit and fail to submit the election form within 90 days, it shall be deemed an irrevocable election to terminate your membership in the system. You will receive a return of your contributions. If you have more than 20 years of service credit and fail to submit the form, it shall be deemed an election to continue membership in the system.
[SJM C 3.28.590]

Termination of Membership

If your membership in the system is terminated either by your election or by failure to submit the election form:

- § You cease to be a member
- § You lose all service credit in the retirement system
- § You lose all other rights and privileges under this system, except the right to a return of your contributions

[SJM C 3.28.590(E)]

Continuing Membership After Leaving City Service

If, after leaving City service, you elect to continue your membership in the system by leaving your contributions in the retirement fund:

- § You continue to be a member of the system
- § You continue to be entitled to your retirement service credit
- § You have rights and benefits to which you or your survivor's may be entitled under the retirement system

[SJM C 3.28.590(F)]



Benefits for Members Who Elect to Continue Membership

If you qualify to continue membership in the system and elect to do so, you will be considered a "deferred vested" member. Unless otherwise noted in this handbook, the benefits for "deferred vested" members are the same as for members who retire directly from active City service. One exception is that you cannot apply for a disability retirement for an injury or disease that occurred after you leave City service. Also, members who do not retire directly from active service are not eligible for dental benefits upon retirement. Please refer to the chapters on service retirements, medical and dental benefits, and death after retirement for a description of benefits.

[SJMC 3.28.1210], [SJMC 3.28.2020(A)(1)]

RETURN OF CONTRIBUTIONS

Under no circumstances can you withdraw your contributions from the retirement system while you are still a City employee and a member of the system. If you terminate City employment, you may receive a return of your contributions. You will not, however, receive any of the contributions made by the City on your behalf.

City contributions are not allocated to individual accounts prior to retirement. They cannot be withdrawn by a member upon leaving City employment or terminating membership in the retirement system.

Once you have withdrawn your contributions, all of your rights in the system are terminated and:

§ You will not receive any retirement system benefits

§ You will not receive a retirement allowance

§ Your beneficiaries will receive no benefits

[3.28.780]

Tax Treatment of Withdrawn Contributions

If you receive a return of contributions, you have a choice to roll over your contributions and interest to an IRA or a qualified retirement plan, or receive a cash disbursement. If you choose a cash disbursement, we must withhold 20% for Federal taxes. According to Internal Revenue Codes, you also may be subject to a 10% penalty for early withdrawal if you are under age 59 1/2. At your request, we will withhold 2% for State taxes.



RIGHT TO REDEPOSIT WITHDRAWN CONTRIBUTIONS UPON RETURN TO CITY EMPLOYMENT

If you leave City employment, withdrawing your contributions when you leave, and subsequently return to City employment in a Federated position, you may redeposit your withdrawn contributions into the Retirement System. When you return to work for the City, if you have noted on your employment application that you are a "rehire", you will receive written notification of this benefit during orientation. If you do not receive this notification, be sure to notify the Department of Retirement Services of your return to City employment. You must file a written notice of your decision to redeposit these funds with the Secretary of the Retirement Board within 30 days of the date that the Retirement Board's written notice is mailed or personally delivered to you.

If you do not file the written notice within the 30-day limit:

- § You will not be able to redeposit these funds into the system
- § You will not receive service credit for your prior employment with the City

To receive service credit for your prior employment, you must redeposit all of the following amounts into the retirement system when you return to City service:

- § All of the accumulated contributions and interest that you withdrew
- § All of the interest your contributions and interest would have earned if they had not been withdrawn, from the day you withdrew your contributions to the day you re-enroll as a retirement system member, the interest amount being based on the actual rate earned by the retirement fund while your contributions were withdrawn
- § Interest on the total of the previous two items from the date you again become a member of the retirement system, until the date that total is redeposited into the retirement fund.

Payment Options In Redepositing Returned Or Withdrawn Contributions

If you do decide to redeposit these funds, you may pay them back using any of the following methods:

- § In one lump sum within 60 days of filing your request with the Secretary of the Retirement Board to redeposit your funds
- § In 78 biweekly equal installments, which will be deducted from your paycheck



§ In a partial lump sum within 30 days of filing your request with the Secretary of the Retirement Board to redeposit your fund, the balance being paid in 78 biweekly installments that are deducted from your paycheck
[SJMC 3.28.790]

Note: The amount that you can redeposit can be limited by Internal Revenue Code requirements for qualified plans because the IRC limits the total amount of contributions in a given year.

SPECIAL PURCHASE OF PRIOR SERVICE CREDIT

If you are a current active employee and member of the plan who has prior service credit that was not covered by the plan, you may be eligible to purchase retirement coverage for that service credit.
[SJMC 3.28.2500]

This includes prior service:

- § Performed in a part-time position for which the member would have received service credit had the employment been on a full-time basis
- § Performed pursuant to the Emergency Employment Act (EEA)
- § Performed pursuant to the Comprehensive Employment and Training Act (CETA)
- § Performed on or after January 1, 1986, pursuant to an employment contract with the City

Eligible prior service does not include service performed as an independent contractor.

Eligibility Requirements

- § A member must satisfy all of the following conditions:
- § The member must have had membership in the Plan on November 24, 1998, and continue membership during any payments for the purchase of the service credit.
- § The member must file a written election to purchase credit for eligible prior service with the Secretary of the Retirement Board



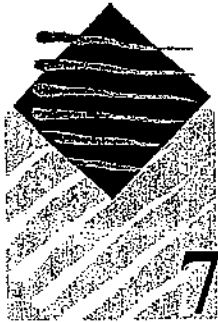
§ The member must pay the total contribution rate (both City plus member portions)
[SJMC 3.28.2500]

RIGHT TO REQUEST RETURN OF CONTRIBUTIONS

Even if you choose to leave your contributions in the retirement fund after leaving City employment, at any time you may submit a written request for a return of your contributions. You will receive your accumulated contributions plus interest earned. Thereafter, you will lose any rights that you, a surviving spouse, or child may have been entitled to under the retirement plan.
[SJMC 3.28.780]

However, if you have elected reciprocity, you may not withdraw your contributions as long as you are employed by a reciprocal agency. Please refer to Chapter 14.





SERVICE RETIREMENT

ELIGIBILITY REQUIREMENTS

Minimum Service	Minimum Age	Benefit
5 years	55	Service Retirement SJMC 3.28.1110(A)(1)
30 years	None	Service Retirement SJMC 3.28.1110(A)(2)
2 years	55	Service Retirement for members who transferred, without break in service, from Santa Clara County Communications to a City Communications classification before April 15, 1991 SJMC 3.28.1110(A)(3)

Application

We suggest that you apply for your service retirement benefits two (2) months before you plan to retire. You can choose to retire on any day, but most members choose to retire at the end of a pay period to receive the full amount of their last active payroll check. Contact the Department of Retirement Services to request that an application be mailed to you, or pick an application up at the Retirement Department Office. We do require copies of the following:

- § Certified copies of your marriage certificate, birth certificate for you and your spouse, and spouse's social security number, if you are married



- § Names, birth dates, and social security numbers of your natural or adopted children 21 years of age and younger
- § Divorce decree(s) from prior marriage(s), and community property settlements covering your retirement benefits, if your marriage and/or divorce occurred during your tenure at the City

Once your application is received, your request is placed on the agenda for the Retirement Board meeting and your department is notified of your application. A staff member will be assigned to assist you through the retirement process and calculate your retirement benefits. The staff member will schedule an appointment to review all your benefits, fill out required paperwork, and answer any questions you may have. We strongly encourage you to bring your spouse or significant other with you to the "retirement counseling" appointment.

COMPUTATION OF SERVICE RETIREMENT ALLOWANCE

The formula used to determine your monthly service retirement allowance is:

$$\text{Years of Service} \times 2.5\% \times \text{Final Compensation}$$

[SJMC 3.28.1110(B)]

For example, if you leave City service with 25 years of retirement service credit and your final compensation is \$3,000 per month, your monthly benefit would be:

$$25 \times 2.5\% \times \$3,000 = \$1,875$$

To compute your own retirement allowance, you need to determine the service credit and final compensation portions of the formula. Please refer to the glossary for detailed explanations of service credit and final compensation.

Retirement Allowance Limitation

In no case will any retiree receive a retirement allowance in excess of 75% of his or her



final compensation. Your benefit reaches 75% of final compensation at 30 years of service.

[SJMC 3.28.1110(B)]

RETURNING TO CITY EMPLOYMENT AFTER SERVICE RETIREMENT

Reinstatement from Retirement to Reenter Federated City Service

Once you have received a service retirement, you cannot be reemployed by the City to render Federated city service unless you are reinstated from your service retirement. Federated city service means City service for which you are entitled to credit under the Federated Employee's Retirement System. [SJMC 3.28.610]

You may apply in writing to the Retirement Board for reinstatement. In order to be reinstated, the Board must find that:

- § Based on medical and physical examination, you are not incapacitated to perform the duties of the position to which you propose to be appointed

Once reinstated:

- § You may be reemployed by the City in the same manner as it employs persons who have not been retired
- § Your service retirement allowance will be cancelled
- § You will again be a member of the retirement system
- § You will have credit in the retirement system for service you had prior to your retirement

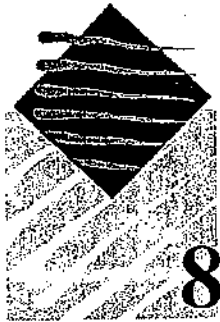
[SJMC 3.28.1160 and 3.28.1170]

Reemployment of Service Retirees for Service Other than Federated City Service

If you are reemployed by the City to a position that does not qualify you for credit in the Federated City Employee's Retirement System, other than as an independent contractor, your service retirement allowance will be suspended during your reemployment. This does not apply if you are elected or appointed to the City Council or any board or commission of the City.

[SJMC 3.28.1180]





DISABILITY RETIREMENT

If you are disabled, a disability retirement may be granted if:

- ξ Your disability is of permanent or extended and uncertain duration
- ξ Your disability occurred while you were an employee of the City and a member of the Federated Retirement System,
- ξ Your disability, due to injury or disease, renders you physically or mentally incapable of continuing to satisfactorily assume the responsibilities and perform the duties of your position and of any other position in the same classification of positions to which the City may offer to transfer you

The determination of disability is made by the Retirement Board on the basis of competent medical opinion.

[SJMC 3.28.1210]

Situations Where Member Is Not Eligible for Disability Retirement Benefits

You do not qualify for any type of disability retirement if:

- ξ You became disabled before you were a member of this retirement system
- ξ You become disabled after your membership in this retirement system is terminated or you are no longer a City employee
- ξ You become disabled during a leave of absence from City service, unless you are on leave with full compensation or pay
- ξ You become disabled due to a nonservice-connected injury or illness and you have less than five (5) years of service credit in the retirement system

[SJMC 3.28.1420 & 3.28.1290(A)]



There are two types of disability retirements:

Service-Connected Disability

Your disability is considered service-connected if it results from injury or disease arising out of and in the course of City employment while a member of the Retirement System.
[SJM 3.28.1210(C)]

Nonservice-Connected Disability

Your disability is nonservice-connected if it is not job related.
[SJM 3.28.1210(B)]

DISABILITY RETIREMENT BENEFIT CHART

Retirement Type	Minimum Service	Benefit
Service-connected Disability [SJM 3.28.1280]	None	2.5% of final compensation for Disability each year of service, but not less than 40% nor more than 75% of final compensation.
Nonservice-connected Disability	5 Years	<u>Hired prior to September 1, 1998:</u> § Same formula as above. § If under age 55, subtract 0.5% for each year between age at retirement and age 55. [SJM 3.28.1300] <u>Hired on/after September 1, 1998:</u> Formula is: § 20% of final compensation § plus 2% for each year of service in excess of 6, but less than 16 § plus 2.5% for years of service in excess of 16 less. [SJM 3.28.1300]



Members Are Not Eligible to Receive Both Service and Disability Retirement Benefits

In no case may you receive both service retirement and disability retirement benefits.
[SJMC 3.28.1360]

Disability Allowance Versus Contributions

Your disability benefits are not restricted to the amount of your contributions. However, the amount that you have received as a disability allowance will be deducted from your accumulated contributions. This provision may be important if you or your estate at some point becomes eligible for a return of your contributions.
[SJMC 3.28.1430]

Application

If you are eligible for disability retirement, the Retirement Board may in some cases grant you a disability retirement without any request or application being made. An application for a disability retirement may be made by:

- ξ You
 - ξ Someone authorized to apply for you on your behalf
 - ξ The head of your department
 - ξ The City Manager
 - ξ The Retirement Board
- [SJMC 3.28.1220 & 1230]

It takes approximately six (6) months to process a disability retirement application. If you are disabled, the sooner you submit an application, the sooner the Retirement Board will be able to make a decision. You should submit your own doctor's medical report(s) along with the application.

Time Limits for Disability Retirements

The Retirement Board may only grant a disability retirement during one of the following time frames:

- ξ While you are still employed by the City and a member of the Retirement System
 - ξ Within four (4) months of discontinuing City service
 - ξ During the continuance of your disability, if it continues after you have stopped working
- [SJMC 3.28.1240]



Summary of the Disability Retirement Process

- Step 1: You submit a retirement application to the Retirement Department. You should include copies of your own doctor's medical reports, if any.
- Step 2: The Retirement Department sends a letter to you and your Department Head advising you of the approximate Board hearing date and the name of the assigned Retirement Department staff member.
- Step 3: The Retirement Department sends a letter to Risk Management requesting copies of medical records relating to the injuries of your service-connected disability retirement application.
- If your application is for a nonservice-connected disability, a request for medical records is sent to Employee Health Services for any records that you may have on file there. However, usually medical reports on a nonservice-connected disability need to be submitted by the applicant.
- Step 4: The Retirement Department sends a copy of your application and medical records to the Retirement Board's Medical Director.
- Step 5: Medical Examinations are scheduled at the discretion of the Retirement Board's Medical Director.
- Step 6: When the report from the Retirement Medical Director is received, the Retirement Department sends the list of any work restrictions to your department requesting a determination if modified duty is available.
- Step 7: If you qualify for Reemployment (Alternate Employment), the Retirement Department sends the Medical Director's list of work restrictions to Human Resources to determine if there are suitable positions available.
- Step 8: When all reports and memos are received, the Retirement Department places your application on the Retirement Board's agenda.
- Step 9: The applicant meets with the Retirement Department staff member to answer questions and to fill out necessary forms. (We encourage you to bring spouses and significant others to this meeting.)
- Step 10: The Retirement Board hears the application at the Board meeting. If your disability application is approved by the Board, your retirement is normally effective on that day.



Medical Examination

After you complete your disability retirement application, a copy of it and copies of medical reports submitted by you or received from Risk Management or Employee Health Services will be sent to the Retirement Board's Medical Director. You may be sent to independent doctors for evaluation of your condition to determine whether you are disabled.

After this exam, the Medical Director will review your application and your own doctor's report(s) together with the independent doctors' medical reports. The Medical Director will then submit a report to the Retirement Board in order to assist them in their decision as to whether or not you are disabled.

If the Board feels it needs additional information to make a decision regarding your disability, it may request a review panel of up to three doctors from a list submitted by the Santa Clara County Medical Society. The Board has the sole authority to determine whether or not it needs a review panel to assist it in its decision.

The Retirement Board will make the final decision at the Board meeting as to whether or not you are disabled and whether or not your disability is work related. If the Board is satisfied that you meet the eligibility requirements, they may grant your retirement and you may receive a disability retirement allowance. Your retirement is usually effective as of the day of the Board approval.
[3.28.1250 - 1260]

SERVICE-CONNECTED DISABILITY RETIREMENT ALLOWANCE

Your monthly allowance for a service-connected disability retirement is calculated using the same formula as for a service retirement allowance:

$$\text{Years of Service} \times 2.5\% \times \text{Final Compensation}$$

In any case, your base retirement allowance will be at least forty percent (40%) of your final compensation, but not more than seventy-five percent (75%) of your final compensation.
[SJMC 3.28.1280]

Your benefit may be reduced if you receive Workers' Compensation benefits as detailed below. Additionally, it may be reduced if you have earnings outside City employment. Please refer to the Outside Earnings section later in this chapter for further details.

WORKERS' COMPENSATION OFFSET

If you receive a service-connected disability retirement and also receive Workers' Compensation payments due to the same disability, your disability retirement allowance will be reduced. The Workers' Compensation

benefits that result in a reduction of your retirement allowance are benefits paid for temporary disability, permanent disability or vocational rehabilitation. Compensation for attorney and medical fees are not subject to the offset.

There is a limitation on the amount of your pension that can be reduced. Under California Labor Code 3751(a), an employer can only deduct a partial credit of the Workers' Compensation benefit paid from the retirement allowance. The credit bears the same ratio to the Workers' Compensation liability as the City's contributions to the plan bears to the total contributions. This offset ratio credit is:

$$\text{Offset ratio} = \frac{\text{Employer contributions made during member's employment}}{\text{Employer and employee contributions made during the member's employment}}$$

The offset ratio is multiplied by the Workers' Compensation monthly benefit to determine the amount of the credit applied to your retirement allowance.

For example:

If your retirement allowance = \$1,000

Offset ratio = 69.70%

Workers' Compensation award = \$606.67 monthly
(\$140 week x 52 weeks/12 months)

The offset on your retirement allowance would be:

$\$606.67 \times 69.70\% = \422.84 per month

Retirement allowance:	\$1,000.00
Workers Compensation offset amount:	<u>\$ (422.84)</u>
Adjusted retirement allowance	\$ 577.16



Amount retiree would receive from the Department of Retirement:	\$ 577.16
Amount retiree is receiving from Workers Compensation	\$ +606.67
Total amount to retiree:	\$1,183.83

Workers' Compensation Offset - Lump Sum Payment

If you receive a lump sum payment from Workers' Compensation rather than weekly payments, the offset ratio will be applied to the lump sum (excluding payments for attorneys fees and medical treatment) to determine the lump sum offset. This lump sum figure will be decreased monthly at the rate that would have been allowed if the lump sum had been monthly payments as described above.

For example:

If your retirement allowance = \$1,000

Offset ratio = 69.70%

Workers' Compensation award = \$20,000

Total Lump Sum offset would be $\$20,000 \times 69.70\% = \$13,940.00$

The offset on your retirement allowance would be:

$\$606.67 \times 69.70\% = \422.84 per month for 33 months
 $(422.84 \times 32.97 = 13,940.00)$

Retirement allowance:	\$1,000.00
Workers Compensation offset amount:	\$ (422.84)
Adjusted retirement allowance	\$ 577.16

If you receive a Workers' Compensation lump sum settlement before you retire, and if you are able to continue working after you receive it, no offset will be made during the time that you were able to work prior to retirement. Deductions will only be made from your disability retirement allowance, not from your regular salary.

If you continue to work for a period of time, but subsequently must retire because of your disability, the deductions will begin with your first disability retirement allowance payment. In the example above, there would be an offset for the full lump sum amount if the lump sum was paid after retirement.

If a person continued to work for 20 months after receiving your lump sum, the deductions would only be made from the first 13 months (33 total minus 20 worked) of disability retirement allowance payments. No more deductions will be made after the 13-month period ends.

[SJMC 3.28.1040]



Maximum Offset:

In the event that you receiving both a monthly Workers Compensation payment and a lump sum settlement, the offset cannot exceed the amount that is equivalent to the member's retirement benefit multiplied by the applicable ratio.

Exceptions to Workers' Compensation Offset

No offset is made for permanent disability payments if you receive a workers' compensation permanent disability rating of 100%.

[SJMC 3.28.1040(B)(5)]

The offset shall not apply if you receive workers' compensation benefits paid for any injury or illness which did not cause or contribute to the disability for which you received a service-connected disability.

[3.28.1040(B)(6)]



NONSERVICE-CONNECTED DISABILITY RETIREMENT ALLOWANCE

To qualify for nonservice-connected disability retirement, you must have five (5) years or more of retirement service credit.

[SJMC 3.28.1290]

HIRED PRIOR TO SEPTEMBER 1, 1998.

If you were hired to the City prior to September 1, 1998, your monthly allowance will be calculated using the following formula:

Years of Service x 2.5% x Final Compensation
minus Offset if under age 55

Before any offset for age, your base retirement allowance will be at least forty percent (40%), but not more than seventy-five percent (75%), of your final compensation.

Under Age 55 Offset

If you are under 55 years of age, the percentage of your final compensation (at least 40%) will be offset by one-half percent (0.5%) per year for each year (and/or fraction of years) that you are under age 55.

For example, if you were 50 years of age with 40% of your final compensation, you would receive 37.5% of your final compensation with the offset. [SJMC 3.28.1300]

$55 - 50 = 5 \text{ years}$ $0.5\% \times 5 \text{ years} = 2.5\%$ $40\% - 2.5\% = 37.5\%$

Your benefit may be reduced if you receive earnings outside City employment. Please refer to Outside Earnings section later in this chapter for further details.

HIRED ON OR AFTER SEPTEMBER 1, 1998:

If you were hired to the City on or after September 1, 1998, your monthly allowance will be calculated using the following formula:

20% x Final Compensation,
plus 2% for each year of service in excess of 6, but less than 16,
plus 2.5% for years of service in excess of 16

[SJMC 3.28.1300]

Your benefit may be reduced if you receive earnings outside City employment. Please refer to Outside Earnings section beginning on the next page for further details.



OUTSIDE EARNINGS

Reporting Requirement

If you receive a disability retirement *prior to reaching age 55*, and you subsequently take another job, you may not receive a total income in excess of the current base salary of the position from which you retired.

As a condition of receiving a monthly disability retirement allowance, you must submit written statements of your total income and earnings from employment outside City service during your disability retirement. These reports are required until you reach age 55.

You have two choices of how to report your outside earnings: monthly statements with an annual summary or annual reporting with a copy of your income tax returns.

Monthly Statements and Annual Summary

Within 10 days after the end of each month, you must file a monthly statement of your total income and earnings. In addition to the monthly reports, on or before May 1 of each year, you must file a notarized declaration under penalty of perjury of your total income and earnings received during the preceding year.

[SJMC 3.28.1325(B)(1)]

Annual Reporting with Income Tax Returns

Instead of the monthly statements described above, you may choose to submit a single report of your annual income and copies of your federal and state income tax returns, including your W-2 and/or 1099 forms showing your total income. The tax returns and forms must be submitted to the Retirement Office by May 1 for income earned in the previous year.

If you elect this option, you will also need to submit a written statement of your projected income and earnings by January 10th of each year. You may file an amended statement if there is a change in your projected income.

[SJMC 3.28.1325(B)(2)]

Termination of Benefits for Failure to File Reports

If you fail to report your income as described above, your disability retirement allowance will be discontinued until you submit the required reports. When you submit the



reports, you will receive any allowances that have been withheld, less any applicable deductions.

[SJMC 3.28.1325(D)]

Deductions for Earnings Outside of City Employment

If your disability retirement allowance plus your outside earnings exceed the current base salary of the position from which you retired, then your allowance will be reduced to the point where your total income equals that salary.

For example:

Current Monthly Salary of Former Position:	\$2,000
Retirement Allowance:	<u>-\$ 800</u>
Maximum Outside Earnings:	\$1,200

In this example, if your outside earnings (as reported monthly or the monthly average from your annual projection if reported annually) are less than \$1,200, then the full retirement allowance will be paid. However, if outside earnings are more than \$1,200, then the retirement allowance will be reduced. If, for example, you earn \$1,500 in a given month, your allowance will be reduced as follows:

Outside Earnings:	\$1,500
Maximum Outside Earnings:	<u>\$1,200</u>
Offset:	\$ 300

In this example, the retirement allowance will be reduced by \$300, from \$800 to \$500.

If your outside income itself exceeds the current base salary of the position from which you retired, then you will still receive a check for \$1. You will also maintain benefits such as medical, dental, and life insurance.

If for any reason your allowance should have been offset and it was not, you are responsible for making up the overpayment. Any excess amount may be deducted from future allowance payments or may be collected from you directly.

Once you reach age 55, this offset is no longer applicable. At such time, you may receive your full disability retirement allowance without deductions for outside employment.

[SJMC 3.28.1330]



Note: If you are subject to a workers' compensation offset, the retirement allowance used in the above calculation will be the amount of your retirement allowance before the offset.

REEMPLOYMENT OF DISABILITY RETIREES (ALTERNATE EMPLOYMENT)

Alternate Employment (Reemployment) is a voluntary program designed to provide disabled City retirees with an opportunity to continue to work for the City in positions other than those for which they are incapacitated. You may participate in this program if

- ξ You have been granted a disability retirement
- ξ You elect in writing the opportunity for reemployment
- ξ You and the City agree, subject to civil service rules, regulations and requirements of the City, that you be reemployed in any position other than the position you held at retirement
- ξ Based on medical and physical examination, you are not incapacitated for performance of the duties of the position to which you may be appointed

If you are reemployed, you will continue in disability retirement, but you will be reinstated to membership in the system and regain credit for those years of service you had prior to your disability retirement.

[SJM 3.28.1441, 3.28.1442 & 3.28.1444]

Reemployment Disability Allowance

The reemployment program offers you the opportunity to earn the same compensation as the position you were in prior to your disability. Assume the salary of your position prior to disability retirement was \$3,000 per month, that the disability retirement allowance you currently receive is \$1,400 per month, and that your new position will pay \$2,000 per month. Your pay would be:

Reemployment Salary:	\$2,000
Disability Retirement Subsidy:	<u>1,000</u>
Monthly Income:	\$3,000 (Same as before disability)



You continue to make contributions to the retirement system from your reemployment salary while in the program.

In no event will the retirement system subsidy exceed the total retirement allowance, including cost-of-living increases, to which you are entitled due to your disability retirement. If the pay in your new position is equal to or more than the base pay of your old position, then you will not receive any retirement allowance or disability retirement allowance.

[SJMC 3.28.1443]

Disability During Reemployment (Alternate Employment)

If you again become disabled and can no longer perform the duties of your reemployment position, you have two options:

- ξ You may resign and keep your original disability retirement allowance.
- ξ You may apply for a new disability retirement within 30 days of ceasing work in your reemployment position.

If the Board finds that you are disabled from your new position, your new allowance will be based on:

- ξ Your total years of service
- ξ Your final compensation in your reemployment position at the time you become disabled in that position
- ξ Whether or not the disability is service-connected

This new allowance supersedes your original disability retirement allowance.
[SJMC 3.28.1449.3]

Death Before Retirement from Reemployment (Alternate Employment)

If you die after being reemployed under the reemployment program, but before retiring from reemployment, your survivors will be eligible for the benefits they would receive as survivors of an active City employee.

[SJMC 3.28.1449.13]



Retirement from Reemployment (Alternate Employment)

You may resign from your Alternate Employment position at any time and keep your original disability retirement allowance, or you may continue in your Alternate Employment position until:

- You become permanently disabled and can no longer perform the duties of your Alternate Employment position

- You reach age 55 and are eligible for a service retirement

After age 55 your options are:

- You may resign and keep your original disability retirement allowance

- You may apply to the Retirement Board for a service retirement. Your retirement allowance would be based on your total years of service before your disability, plus your Alternate Employment years.

Under no circumstances will you be entitled to receive more than one retirement allowance. [SJMC 3.28.1449.11-12]

REEMPLOYMENT INTO NON-FEDERATED POSITION

If you are a disability retiree under age 55, you may be reemployed by the City, *at the City's discretion*, in a position that does not qualify for membership in the Federated Retirement System as long as you are not incapacitated for the duties of the new position. (Some part-time positions are examples of non-federated positions.) You will continue to receive your retirement allowance, except that you may not receive **compensation in excess of the current base salary of the position from which you retired.**

Therefore, during the time you are reemployed in a position where the pay is less than you were earning when retired, you will receive:

- ξ The compensation of your reemployment position; plus

- ξ A disability retirement allowance that, when added to your reemployment position compensation, does not exceed the current base salary of the position from which you retired.

[SJMC 3.28.1340]



REINSTATEMENT TO DUTY AFTER DISABILITY RETIREMENT

Permanent Disability After Age 55

If at age 55 you are still incapacitated to perform the duties of the position you held at the time of your disability retirement, and of any other position in the same classification of positions, you will be deemed permanently disabled. This means that you no longer will be subject to recall to duty, and your disability retirement allowance may not be canceled.

[SJMC 3.28.1400]

Medical Exam During Disability Retirement

Once you have received a disability retirement, the Retirement Board may at any time require you to undergo a medical examination to determine the status of your disability.

[SJMC 3.28.1370]

Reinstatement to Duty

If the Retirement Board determines that you have become capable of performing the duties of your position, and you are under age 55, you will be subject to reinstatement to duty. Once reinstated, you will again become a member of the system and will be entitled to credit for past service as if you had never retired.

[SJMC 3.28.1380 and 3.28.1446]

Disability Retirement Allowance until Reinstatement

If the Board determines that you are no longer disabled, you will continue to receive your disability retirement allowance until the City reinstates you, or until:

- ξ You reject an offer of reinstatement into your previous position(s) or a position in the same classification
- ξ You refuse or fail to report to work in your previous position or a position in the same classification when requested to do so
- ξ You become unable to accept reinstatement into, or again become unable to perform the duties of your previous position, or a position in the same classification

[SJMC 3.28.1440]



Refusal to Accept Reinstatement

If you are receiving a disability retirement allowance, are subsequently found to be capable of performing the duties of your position, and are offered reinstatement, you must accept reinstatement and report for duty. If you fail to do so, all of your rights and benefits, and your survivors' right and benefits, will be terminated.
[SJMC 3.28.1390]

Failure or Refusal to Submit to Medical Examination

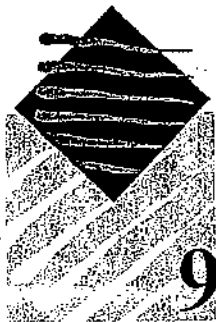
If you fail or refuse to undergo any medical exam that is required by the Retirement Board while you are receiving a disability retirement allowance, the Board may terminate your allowance. If your allowance is terminated, you will no longer have any right to restoration to duty, nor will you or any of your survivors be entitled to any allowances or benefits of this plan.

However, if you apply for reinstatement of your disability retirement within one year of the termination of your allowance, and can prove at that time that you are still disabled, the Board may reinstate your disability retirement and your allowance as of the date decided by the Board.

If you die before having your disability retirement and your allowance reinstated, your surviving spouse or surviving children may apply to the Retirement Board for survivorship benefits or death benefits. If they can prove that your disability continued until your death, the Board may grant them survivorship or death benefits to which they would have been entitled if your disability retirement had not been terminated. They must apply for these benefits **within one year from the date the Board terminated your disability retirement**. No survivorship allowances or death benefits will be granted to anyone unless application is made within this one-year period.

[SJMC 3.28.1410]





DEATH AFTER RETIREMENT

This chapter describes the benefits available to your eligible survivors if you die after you have retired.

DEATH AFTER RETIREMENT WITH LESS THAN 5 YEARS OF SERVICE CREDIT

Unless you choose an optional allowance as described on page 47, no monthly survivorship allowances will be paid upon your death if you have less than 5 years of retirement service credit. However, your estate or designated beneficiary will receive a death benefit if, at the time of your death, you have not received at least as much as the total of your contributions, plus interest. Your estate or beneficiary will receive the difference between your contributions (including interest) and the total paid to you by the retirement system at the time of your death.

[SJMC 3.28.1070]

Note: Since at least five years of service is required for service retirements, this provision applies primarily to disability retirees with less than five years of service credit.

Special Provision for Former County Communications Employees

If you became a member of this Retirement System prior to April 15, 1991, pursuant to a transfer of communication functions from the County of Santa Clara to the City of San José and received a retirement under the special provision for these members, your eligible survivors will receive the survivorship allowance described in the next section. This applies even if you had less than five years of service since the special provision allows a service retirement with two or more years of service. Please refer to Chapter 7.

[SJMC 3.28.1570(C)]



DEATH AFTER RETIREMENT WITH MORE THAN 5 YEARS OF SERVICE CREDIT

The following benefits apply if:

- ξ You die after you have retired and
 - ξ You were credited with at least five years of retirement service credit at the time of your retirement (or you are an eligible former County Communications employee described above.)
-

[SJMC 3.28.1570]

Survivorship Allowance to Surviving Spouse

If you have an eligible surviving spouse at the time of your death, your spouse will be eligible for a monthly allowance *until he or she dies*. An eligible surviving spouse is the person to whom you were married both at the time of your retirement and at the time of your death and who survives your death. [SJMC 3.28.1560(C)]

The monthly survivorship allowance will be 1/2 of your retirement allowance.
[SJMC 3.28.1580]

Survivorship Allowance to Surviving Children If There Is No Surviving Spouse

No survivorship benefits are paid to your children if you have a surviving spouse. If at the time of your death, you do not have a surviving spouse, your eligible children will receive a survivorship allowance until they reach the age of 18. They may continue to be eligible until age 22 if they are full-time students and meet the qualifications for a school allowance.

- ξ Your children must meet all of the following requirements:
 - ξ The child survives your death
 - ξ The child is unmarried at the time of your death (and has never been married)
 - ξ The child is under the age of 18 years at the time of your death
 - ξ If the child is adopted, the adoption was completed prior to your death

[SJMC 3.28.1560(B)]



If you have a child that is born after your death, the child will be entitled to benefits at birth.

[SJMC 3.28.1630]

Your eligible children will receive a percentage of the allowance that would have been payable to your surviving spouse, if there had been one. The allowance will be calculated as follows:

One Child:	25% of the spousal allowance
Two Children:	50% of spousal allowance (25% each)
Three or More Children:	75% of spousal allowance divided by number of children

[SJMC 3.28.1590(B)]

Survivorship Allowance to Surviving Children Where Surviving Spouse Dies After Receiving Allowance

If at the time of your death, you had an eligible surviving spouse who subsequently dies, any unmarried eligible surviving children existing at the time of your spouse's death will receive the children's survivorship allowance described previously.

[SJMC 3.28.1600]

Payment Method of Surviving Children's Allowance

Your children's survivorship allowance will be paid to the custodial parent or guardian. The Retirement Board may, however, pay the allowances to any other person, or directly to the children, if it feels this is in the best interest of the children. In addition, the Board may suspend payments if it has reason to believe that the allowances are not being used for the benefit of the children.

[SJMC 3.28.1520 and 3.28.1610]

As an alternative, you may file a beneficiary designation form with the Retirement Board



requesting that your children's survivorship allowance be paid through any of the following:

- § A named custodian for your children under the California Uniform Transfers to Minors Act
- § A trustee of a trust created for the benefit of you children under your will
- § A trustee of an inter vivos trust (Living Trust)

If you want your children's survivorship allowance to be distributed through one of these vehicles, you must legally name the custodian or establish the trust using one of these three vehicles. In addition, you must put the information on an official trust designation form and file it with the Retirement Board, naming the custodian or explaining that the trust exists. If payment is to be made to one of these trusts, the trust must be legally approved by the courts prior to any payments being made.
[SJMC 3.28.1525]

Benefits When There Is No Surviving Spouse Nor Surviving Children

If you have no eligible surviving spouse or eligible children, your estate or designated beneficiary will receive a lump sum death benefit. This is payable only if, at the time of your death, you have not received at least as much as the total of your contributions, plus interest. Your estate or beneficiary will receive the difference between your contributions (including interest) and the total paid to you by the retirement system at the time of your death. If you choose an optional allowance as described on page 45, then your designated beneficiary will receive that monthly survivorship allowance.
[SJMC 3.28.1070]

SPECIAL DEATH BENEFIT

In addition to the benefits outlined above, \$500 will be paid to the beneficiary you have designated, or to your estate if no beneficiary is designated.
[SJMC 3.28.1620]

OPTIONAL SURVIVORSHIP ALLOWANCES

You have the option of *reducing* your own retirement allowance in order to provide a survivorship allowance after your death.
[SJMC 3.28.1650]

Your choices include reducing your allowance in order to provide your spouse or child



with a higher survivorship allowance than the benefits described in the previous sections of this chapter. Also, you may elect to reduce your retirement allowance in order to provide a beneficiary, who would not otherwise be entitled, with a monthly survivorship allowance.

You and your beneficiary's ages are very important in determining the amount by which your retirement allowance will be reduced. If your beneficiary is significantly younger than you, your benefit would be reduced more than if you were the same age. This is because the benefit to your beneficiary will most likely be paid for a longer period of time.

Time Limits to Choose Options

An election for an optional settlement must be made in writing no later than 30 days after the effective date of your retirement. You may amend or revoke any election in writing no later than 30 days after the effective date of your retirement. Any election that is not amended or revoked on or before 30 days from the effective date of your retirement shall be irrevocable.

[SJMC 3.28.1660]

Once you elect an optional settlement that reduces your own retirement allowance, you cannot have your base allowance changed back to its original amount after the deadlines have passed.

Optional Settlements

Your options include:

- § A reduced retirement allowance paid to yourself until your death, and then the same amount paid to your beneficiary for the rest of his/her life.

[SJMC 3.28.1670]

- § A reduced retirement allowance paid to you until your death, and then one-half of your reduced allowance paid to your beneficiary for the rest of his/her life. (Note: If you have an eligible surviving spouse, your spouse will receive 1/2 of your retirement allowance without requiring you to take a reduced allowance. Please refer to page 42.)

[SJMC 3.28.1680]

A reduced retirement allowance paid to yourself until your death, and then a percentage of your retirement allowance paid to your beneficiary for the rest of his/her life. The percentages are subject to the approval



of the Retirement Board. (This option is not available to you if, at the time of retirement, you have a spouse or child who would be entitled to survivorship benefits.)

[SJMC 3.28.1690]

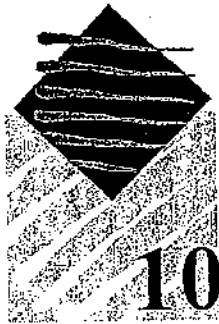
Beneficiaries of Optional Settlements

If you are married at retirement and at the time you elect any of the options, then you must designate your spouse as the beneficiary entitled to receive the optional settlement. Nobody other than your spouse is eligible to be a designated beneficiary. If you name someone other than your spouse and at the time of your death there is an eligible surviving spouse or child, then no benefits will be paid to the designated beneficiary. Instead, survivorship benefits will be paid to your surviving spouse or surviving children. [SJMC 3.28.1710(B) and 3.28.1700]

Any beneficiary you designate to receive an optional settlement benefit must be a natural person; that is, your beneficiary must be a real person, not a corporation, partnership, or a animal. Your beneficiary must satisfy the Board that he/she is indeed your designated beneficiary and is entitled to receive the benefit(s) in question. [SJMC 3.28.1710]

Beneficiary designation forms for active employees are available from the Human Resources Department, or, if you are retired, from the Department of Retirement Services.





DEATH BEFORE RETIREMENT

This chapter describes the benefits available to your survivors if you die while still a member of the retirement system, but before retirement.

Death Before Retirement: Nonservice-connected Death with less than 5 Years of Service

If at the time of your death, you had less than 5 years of service credit and your death was not service-connected, your designated beneficiary or estate will receive the following benefits:

- § Your accumulated contributions to the system, and
- § One-twelfth of your annual earned or earnable (whichever is greater) compensation during the twelve months immediately preceding your death multiplied by the number years of service credit to which you were entitled at the time of your death. This amount may not exceed one-half of your compensation earned or compensation earnable in the twelve-month period preceding your death.

[SJMC 3.28.1500]

This death benefit is a lump sum payment, but it may be paid to your beneficiary in a fixed number of installments. You may elect in writing to have your death benefits paid to your beneficiary in installments. If you have not made an election, your beneficiary, after your death, may choose installment payments before any death benefit is paid.

The monthly installment will be the actuarial equivalent of the lump sum amount. The payments can be fixed in number of installments or amount of each installment. Regular interest will be credited on the unpaid balance of the benefits payable. The payments continue until the actuarial equivalent of the total death benefit has been paid.

[SJMC 3.28.1510]



Death Before Retirement: More than 5 Years of Service or Service-connected Death

This section applies if you meet the following conditions:

- § You die while a member of the retirement system
- § You die prior to being retired
- § You had more than 5 years of service at the time of your death or your death is determined by the Board to have been a service-connected death

[SJMC 3.28.1470]

Survivorship Allowance to Surviving Spouse

If you have an eligible surviving spouse at the time of your death, your spouse will be eligible for a monthly allowance *until he or she marries or dies*, whichever comes first. (The allowance will continue even if your spouse remarries if you are at least 55 years old with at least 20 years of retirement service credit at the time of your death or have at least 30 years of service regardless of your age.)

[SJMC 3.28.1480])

An eligible surviving spouse is the person to whom you were married at the time of your death and who survives your death. [SJMC 3.28.1460(E)]

The monthly allowance will be calculated as follows:

$$\text{Years of Service} \times 2.5\% \times \text{Final Compensation}$$

If you were still an active City employee at the time of your death, the allowance will be a minimum of 40% of your final compensation.

The allowance will not be more than 75% of your final compensation

[SJMC 3.28.1480(A)]



Survivorship Allowance to Surviving Children if There is No Surviving Spouse

No survivorship benefits are paid to your children if you have a surviving spouse. If at the time of your death, you do not have a surviving spouse, your eligible children will receive a survivorship allowance until they reach the age of 18. They may continue to be eligible until age 22 if they are full-time students and meet the qualifications for a school allowance.

Your children must meet all of the following requirements:

- ξ The child survives your death
- ξ The child is unmarried at the time of your death (and has never been married)
- ξ The child is under the age of 18 years at the time of your death
- ξ If the child is adopted, the adoption was completed prior to your death [SJM C 3.28.1460(D)]

If you have a child that is born after your death, the child will be entitled to benefits at birth. [SJM C 3.28.1530]

Your eligible children will receive a percentage of the allowance that would have been payable to your surviving spouse, if there had been one. The allowance will be calculated as follows:

One Child:	25% of the spousal allowance
Two Children:	50% of spousal allowance (25% each)
Three or More Children:	75% of spousal allowance divided by number of children

[SJM C 3.28.1480(B)]



Survivorship Allowance to Surviving Children if Allowance to Surviving Spouse Ceases Due to Death or Remarriage

If at the time of your death, you had an eligible surviving spouse whose allowance stopped due to death or remarriage, your eligible surviving children will receive the children's survivorship allowance described on the previous page.
[SJMC 3.28.1480(C)]

Payment Method of Surviving Children's Allowance

Your children's survivorship allowance will be paid to the custodial parent or guardian. The Retirement Board may, however, pay the allowances to any other person, or directly to the children, if it feels this is in the best interest of the children. In addition, the Board may suspend payments if it has reason to believe that the allowances are not being used for the benefit of the children. [SJMC 3.28.1520]

As an alternative, you may file a beneficiary designation form with the Retirement Board requesting that your children's survivorship allowance be paid through any of the following:

- § A named custodian for your children under the California Uniform Transfers to Minors Act
- § A trustee of a trust created for the benefit of you children under your will
- § A trustee of an inter vivos trust (Living Trust)

If you want your children's survivorship allowance to be distributed through one of these vehicles, you must legally name the custodian or establish the trust, and you must put the information on an official trust designation form and file it with the Retirement Board, naming the custodian or explaining that the trust exists. If payment is to be made to one of these trusts, the trust must be legally approved by the courts prior to any payments being made.
[SJMC 3.28.1525]



Benefits When There Is No Surviving Spouse Nor Surviving Children

If you have no surviving spouse or eligible children, your designated beneficiary will receive your death benefit. If you have not named a beneficiary, the death benefit will be paid to your estate. (You may name or change your beneficiary at any time.) This benefit consists of the following:

- ξ Your accumulated contributions to the system, and
- ξ One-twelfth of your annual earned or earnable (whichever is greater) compensation during the twelve months immediately preceding your death multiplied by the number years of service to which you were entitled at the time of your death. This amount may not exceed one-half of your compensation earned or compensation earnable in the twelve-month period preceding your death. (This limit is reached at 6 years of service.)

[SJMC 3.28.1500]

This death benefit is a lump sum payment, but it may be paid to your beneficiary in a fixed number of installments. You may elect in writing to have your death benefits paid to your beneficiary in installments. If you have not made an election, your beneficiary, after your death, may choose installment payments before any death benefit is paid.

The monthly installment will be the actuarial equivalent of the lump sum amount. The payments can be fixed in number of installments or amount of each installment. Regular interest will be credited on the unpaid balance of the benefits payable. The payments continue until the actuarial equivalent of the total death benefit has been paid.

[SJMC 3.28.1510]





MEDICAL AND DENTAL BENEFITS

This chapter describes medical and dental benefits for service and disability retirees and their survivors. It also describes the eligibility requirements for survivors of members who died prior to retirement.

MEDICAL BENEFITS

Medical Insurance Eligibility Requirements For Retirees

You may be entitled to medical insurance coverage after retirement if you meet the following qualifications:

- § You are retired for service or disability
- § You are entitled to credit for 15 or more years of service or you receive an allowance that is equal to at least 37.5% of your final compensation
- § ~~You apply for medical insurance coverage at the time of your retirement and agree to pay any applicable premiums.~~

Note: If you have a disability retirement that is being offset due to workers' compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.

[SJMC 3.28.1950(A) and 3.28.1970(A)]

Medical Insurance Coverage for Spouse

Your spouse is eligible for medical insurance only if you were married to that spouse at the time of your retirement.

[SJMC 3.28.1970(C)]



Medical Insurance Coverage for Survivor(s)

Your surviving spouse or children may be eligible for medical insurance coverage if they meet the following qualifications:

- ξ You died before retiring, or were retired for service or disability
- ξ At the time of your death, you were entitled to credit for 15 or more years of service or were receiving an allowance that is equal to at least 37.5% of your final compensation
- ξ Your survivor receives a monthly survivorship allowance because of your death during your employment with the City or after you retired
- ξ At the time of your death, you and your survivor were enrolled in one of the City-sponsored medical insurance plans
- ξ Your survivor applies to continue medical insurance coverage at the time of your death
- ξ Your survivor agrees to pay any applicable premiums for this coverage

Note: If, at the time of your death, you were receiving a disability retirement that was being offset due to workers' compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.

[SJMC 3.28.1960 and 3.28.1970(B)]

Single Coverage Only for Surviving Spouse

Generally, a surviving spouse is eligible only for single coverage. However, if you have at least one surviving child, or if your spouse has at least one unmarried minor child, and the child was enrolled in a medical insurance plan sponsored by the City at the time of your death, then your surviving spouse will be eligible for family coverage.

[SJMC 3.28.1970(C)]



Medical Insurance Premiums

The Retirement System pays 100% of the premium for the lowest cost plan available to active City employees. If you or your survivors select a plan other than the lowest cost plan, then you or your survivors must pay the difference between the premium for the selected plan and the lowest cost plan. Premium payments are deducted from your (or your survivor's) retirement allowance.
[SJMC 3.28.1980]

DENTAL BENEFITS

Dental Insurance eligibility Requirements for Retirees

You may be entitled to dental insurance coverage after retirement if you meet the following qualifications:

- ξ You retire directly from City service
- ξ At the time of your retirement, you are enrolled in one of the dental insurance plans sponsored by the City
- ξ You are entitled to credit for 5 or more years of service or you receive an allowance that is equal to at least 37.5% of your final compensation

Note: Members who leave City service prior to retirement ("deferred vested" members) are not eligible for dental insurance.
[SJMC 3.28.2020(A)(1)]

Note: If you have a disability retirement that is being offset due to workers' compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.
[SJMC 3.28.2000 and 3.28.2020]



Dental Insurance Coverage for Survivors

Your surviving spouse or children may be eligible for dental insurance coverage if they meet the following requirements:

- ξ You died before retiring, or were retired for service or disability
- ξ At the time of your death, you were entitled to credit for 5 or more years of service or were receiving an allowance that is equal to at least 37.5% of your final compensation
- ξ Your survivor receives a monthly survivorship allowance because of your death during your employment with the City or after retiring directly from active City service
- ξ At the time of your death, you and your survivor were enrolled in one of the City sponsored dental insurance plans

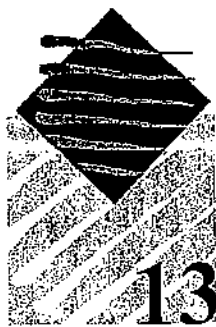
Note: If, at the time of your death, you were receiving a disability retirement that was being offset due to workers' compensation benefits, the allowance used to determine if you meet the 37.5% minimum is your retirement allowance before the offset.

[SJMC 3.28.2010 and 3.28.2020(B)]

Dental Insurance Premiums

The Retirement System pays 100% of the dental insurance premiums.
[SJMC 3.28.2030]





COST-OF-LIVING ADJUSTMENTS

After receiving a retirement or survivorship allowance for one year, you are eligible for cost-of-living adjustments (COLA). On April 1 of every year, your retirement allowance or survivorship allowance will be adjusted to reflect changes in the Consumer Price Index (CPI). The resulting adjustment will remain in effect until March 31 of the following year.

No matter what the "official" cost-of-living change is, no allowance will be increased more than 3 percent over, or decreased more than 3 percent below, the allowance paid during the previous year (April 1 to March 31).

Cost-Of-Living Adjustment Eligibility

To receive an allowance increase or decrease on April 1, you must:

- ξ Have been receiving a retirement allowance for at least one full year; or
- ξ Have been the survivor of an active employee for at least one full year; or
- ξ Have been the survivor of an eligible retiree who died at least one full year earlier

If you retire part way through the year (between April 1 and March 31), your first retirement allowance cost-of-living adjustment will begin on the first day of the month following the one-year anniversary of your retirement. The adjustment will be prorated for the number of months remaining until the following April. Adjustments occur on April 1. (See the example on page 63.)

If you die part way through the year (between April 1 and March 31), the cost-of-living adjustments in your survivors' allowance(s) will begin on the first day of the month following the one year anniversary of your death. The adjustment will be prorated for the number of months remaining until the following April. Adjustments occur on April 1. (See the example on page 63.)



Determination of Cost-of-Living Adjustment

Before each April 1, the Retirement Board will determine the cost-of-living increase or decrease for the previous calendar year. To determine the amount of this adjustment, the Board will use the most current December-to-December change in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland Metropolitan Area, published by the U.S. Department of Labor's Bureau of Labor Statistics.

This cost-of-living increase or decrease (subject to the 3 percent limitation) above or below the previous year's CPI, will be applied to all eligible retirement allowance payments for the period beginning on April 1 and will continue through the following March 31.

If the CPI increase exceeds 3 percent, the excess percentage will be accumulated from year to year in your "carry-over" account. (Only percentage points are tracked in the "carry-over" account, not actual money.) In years when the CPI increase is less than 3 percent, the Retirement Department will use your "carry-over" percentage points, if any, to raise your cost-of-living adjustment up to 3 percent.

[SJMC 3.44.040]

Limitations on Decreases in Allowance

No cost-of-living decrease will reduce your retirement or survivorship allowance below the amount to which you or your survivors were originally entitled.

[SJMC 3.44.080]



Example of Cost-of-Living Calculation

1. You retire on June 10, 2000. For the purposes of this example, assume your retirement allowance is \$3,000 per month.
2. Assume the CPI for December 1999 shows a 3.5% cost-of-living increase and that the CPI for December 2000 shows a 5.5% cost-of-living increase. The difference between December 1999 and December 2000 is 2%. Therefore, the Cost of Living Adjustment for April 2001 is 2%.
3. From June 10, 2000 - June 30, 2001, your retirement allowance will remain \$3,000 per month.
4. Starting in July 2001, the first month following one year of retirement, you will receive your first cost-of-living adjustment in addition to your allowance.
5. Because you retired after March 31, 2000, you are eligible for a partial year of cost-of-living adjustment benefits for the period July 2001 through March 2002 (9/12, or 75% of the year).

$$2\% \times .75 = 1.5\%$$

$$\$3,000 \times 1.5\% (\text{cost-of-living increase}) = \$45.00$$

$$\text{Your retirement allowance will become } \$3,000 + \$45.00 = \$3,045.00$$

6. Assume the cost-of-living increase from December 2000 to December 2001 is 4%.
7. As of April 1, 2002, you will receive the full 3% increase and 1% will be added to your "carry-over" account.

$$\$3,045.00 \times 3\% = \$91.35$$

$$\$3,045.00 + \$91.35 = \$3,136.35$$

Your allowance will be then be \$3,136.35 per month.

From then on, you are eligible for the full amount of cost-of-living increases (or decreases) that take effect each April 1. These increases (or decreases) are based on your original retirement allowance plus whatever cost-of-living adjustments have been made in prior years. In this example, your next cost-of-living adjustment would be made to your new retirement allowance of \$3,136.35 per month.



Cost of Living Adjustment (COLA) Bank Accounts

Changes in the Consumer Price Index may be greater than the 3 % increase and decrease allowed by the Federated City Employees' Retirement System. For this reason, members are allowed to accumulate any cost-of-living percentage increases above the maximum 3 % paid by the system. No actual money is kept in the "COLA bank" account. It is only a method to track excess percentage points.

The percentage points in your "COLA bank" account, if any, will be used to make your cost-of-living increase 3 % in years when the actual cost-of-living index increases by less than 3%.

For example, if the cost-of-living index rose 4 % in one year, you would receive the system's maximum 3 % increase, and 1% would be added to your "COLA bank" account.

	<u>Index Increase</u>	<u>Plan Pays</u>	<u>Add to Carry-over</u>	<u>"Carry-over" Account</u>
<u>Balance</u>				
Year 1	4%	3%	1%	1%
Year 2	5%	3%	2%	3%
Year 3	1 1/2%	3%	(2 1/2%)	1/2%
Year 4	2%	2 1/2%	0%	0%

In no case, however, will members have a negative balance in their "COLA bank" account. You cannot draw a larger percent than is available in your "COLA bank" account. (See example in Year 4.) This process is done automatically by the Retirement Department. There is no need to request deductions from your "COLA bank" account.





GLOSSARY

ACCUMULATED CONTRIBUTIONS

Your own contributions to the system. Does not include contributions the City makes to the system on your behalf. [SJMC 3.28.030(N)]

ACTUARY

The Retirement Board's actuary is a statistician who compares economic and demographic assumptions with the actual experience of the Retirement System. The actuary then determines the projected liabilities and makes recommendations for the City and Member contribution rates. The actuary is also responsible for analysis and cost estimates of any proposed plan changes.

ACTUARIAL EQUIVALENT

A benefit of equal value when computed, based on the mortality tables and regular interest rate adopted by the Retirement Board. For example, if you choose an option that pays you a lower retirement allowance in return for your spouse receiving a higher survivorship allowance, the total benefit is an actuarial equivalent. In other words, the total payments to you and your spouse are calculated to be equal under any option that you may choose.

COMPENSATION

Your base salary includes all paid leaves (including sick leave, paid holidays, paid vacation leave, and paid compensatory time). This does not include overtime, lump sum compensatory time payoffs or any other special pays. [SJMC 3.28.030(E)]

COMPENSATION EARNABLE (Full-time Service)

The base monthly or biweekly pay at your salary step within your classification. [SJMC 3.28.030(F)(1)]

COMPENSATION EARNED (Part-time Service)

The base monthly or biweekly pay you *actually* earn. [SJMC 3.28.030(F)(2)]

CURRENT SERVICE

Your City service since July, 1 1975. [SJMC 3.28.030(H)]



FEDERATED POSITION

A job that is normally covered by the Federated City Employees' Retirement System.

FINAL COMPENSATION (Final/Highest Average Salary)

Your final compensation is the highest average annual base pay earnable over 3 consecutive years of City service. Your *monthly* final compensation is calculated by dividing your base pay during your most highly paid 3 consecutive years of salary by 36. (For persons who qualify to be members of the retirement system as part-time employees, the compensation used is the amount actually paid to you for the part-time service. For persons on a reduced work week, the compensation is the amount "payable" to you based on full-time service.)

If you have breaks in service, those breaks may be combined to make a period of three consecutive years as long as the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the breaks and compensation earnable during such time shall be included in computation of final compensation. If a break in service exceeded six months in duration, the first six months of the break and the compensation earnable during those six months shall be *included* in the computation of final compensation. Time included in the break that is more than six months and the compensation earnable during that excess time shall be *excluded* in the computation of final compensation.

[SJMC 3.28.030(K) and 3.28.030(F)]

MORTALITY TABLE

A table detailing the expected life span and expected number of annual deaths of retirement system members. The table is developed by the system's actuary.

PRIOR SERVICE

Your City service prior to July 1, 1975, for which you are entitled to credit under this System. [SJMC 3.28.030(T)]

RECIPROCITY

An agreement effective on December 9, 1994, between the City of San José and the California Public Employees' Retirement System (CalPERS) that *in certain situations* results in improved retirement benefits for persons who move from one retirement system to the other.



REGULAR INTEREST

Interest at the rate established by the Retirement Board, compounded annually.
[SJMC 3.28.030(U)]

RETIREMENT ALLOWANCE

The monthly service retirement allowance or disability allowance you receive after you retire. Could also be called a pension.

RETIREMENT BOARD

The trustees responsible for managing the Retirement Fund. The Board consists of five members: a member of the Civil Service Commission, a member of the City Council, two City employees who are also members of the Retirement System, and one member of the public who is not connected with City government, but has significant relevant experience in investment matters. [SJMC 2.08.320]

RETIREMENT SERVICE CREDIT

(See Service, Years of)

SAN JOSE MUNICIPAL CODE [SJMC]

The body of laws governing the City of San Jose.

SERVICE, YEARS OF (Retirement Service Credit)

Period of time for which Retirement System members worked for the City of San José and were enrolled in the Retirement System. Includes regular full-time and eligible part-time service, eligible active military service, and absence from work with full compensation (paid administrative leave, paid compensatory time, paid disability leave, paid holidays, paid sick leave, paid vacation time, etc.).

You earn one year of Federated city service if you work at least 1,739 hours of service credit in any calendar year. Although you actually work 2,080 hours per year if you work full-time, you only need 1,739 hours to earn one year of retirement service credit. If you work more than 1,739 hours in one year, you still get one year of credit. If you are on a reduced (less than full-time) work schedule but work 1,739 hours in one year, you earn one year of credit. If you work fewer than 1,739 hours in one year, you divide the actual number of hours you worked by 1,739 to determine the service credit for that year.

For example, if you worked 10 years and 2 months (or 8 weeks), your retirement



service credit would be calculated as follows:

Full years of service:		10.00
Partial year:	8 weeks x 40 hours per week = 320 hours	
	320 hours / 1739 hours (full year) =	<u>0.18</u>
Total years of service:		10.18

[SJMC 3.28.680]

